Before the

Judicial Council of the Eleventh Circuit

General Order 2022-E

ON REQUEST FOR REVIEW OF DECISION FILED BY:

CAITLYN DEE CLARK

In Re: The Request for Review of Decision filed by Caitlyn Dee Clark against the United States District Court for the Middle District of Georgia, under the Middle District of Georgia Employment Dispute Resolution Plan.

ORDER

Before: WILLIAM PRYOR, Chief Judge, WILSON, JORDAN, ROSENBAUM, NEWSOM, BRANCH, LUCK, and LAGOA, Circuit Judges; and CORRIGAN, ALTONAGA, COOGLER, BATTEN, WALKER, MARKS, and BEAVERSTOCK, Chief District Judges.*

The non-disqualified members of the Judicial Council have considered the Request for Review of Decision filed by Caitlyn Dee Clark, dated July 23, 2021, in case number GAMD-FC-21-01, under authority of the provisions of the United States District Court for the Middle District of Georgia Employment Dispute Resolution Plan approved on September 14, 2020.

In accordance with §V.C.4.–5. of that Plan, and for the reasons stated in its Memorandum Opinion, the Judicial Council hereby AFFIRMS the June 25, 2021, decision of Presiding Judicial Officer J. Randal Hall determining that Ms. Clark is entitled to no relief. All non-disqualified members concur.

FOR THE JUDICIAL COUNCIL:

Chief Judge

* Circuit Judges Jill Pryor and Britt Grant, and Chief District Judges J. Randal Hall and Marc T. Treadwell, took no part in this decision.

BEFORE THE ELEVENTH CIRCUIT JUDICIAL COUNCIL

IN RE CAITLYN CLARK

EDR Complaint No. GAMD-FC-21-01

Memorandum Concerning Request for Review from the Final Written Decision of the Presiding Judicial Officer for the Middle District of Georgia

---

Complainant Caitlyn Clark requests review of the Presiding Judicial Officer's ("PJO") final written decision on Clark's formal complaint against the Middle District of Georgia asserting claims of pregnancy discrimination, harassment based on pregnancy, abusive conduct, and retaliation under the Middle District's Employment Dispute Resolution ("EDR") Plan. [*See generally* Vol. III, Tab 2 (Request for Review)][1] The PJO investigated Clark's claims, during which investigation he interviewed Clark and other witnesses and reviewed documents identified as relevant to Clark's complaint. [*See* Vol. I, Tabs 20 (Witness Interviews) and 21 (Proposed Decision) at Exs. 1-17] Following the investigation, the PJO issued a final written decision concluding that none of Clark's

---

[1] Record cites are to the four-volume record, as finalized on appeal in an electronic and hard copy format. Cites include a reference to the volume, tab, and exhibit number (when available) where the record document can be found.

claims were meritorious. [Vol. I, Tab 28 (Final Decision)] After a careful review of the Middle District's EDR Plan, the submissions of the parties, and the record—including the transcribed interviews conducted by the PJO, the relevant documents, the PJO's final written decision, and Clark's objections to the decision—we **AFFIRM**.

BACKGROUND

Clark's EDR claim stems from her employment as a term law clerk for Judge C. Ashley Royal, a senior district judge in the Middle District of Georgia. [*See generally* Vol. I, Tab 3(Formal Complaint)] Clark claims that Judge Royal reduced her clerkship term and subsequently terminated her employment on account of her pregnancy, in violation of the Middle District's EDR Plan. [*See id.* at 1-2] Clark further claims that during her employment in Judge Royal's chambers, she was harassed and subjected to abusive conduct on account of her pregnancy by Judge Royal's career law clerk, Sally Hatcher. [*See id.* at 1] Finally, Clark claims that Judge Royal retaliated against her because she complained about the above. [*See id.* at 18, 21]

I. Judge Royal hires Clark, a former intern in his chambers

Clark worked as an intern in Judge Royal's chambers in August 2016, while she was in law school at Mercer University in Macon, Georgia. [Vol. III, Tab 2 (Request for Review) at 2] As an intern, Clark worked directly with Judge Royal's career law clerk, Sally Hatcher, and his courtroom deputy, Lee Anne Purvis. [Vol. I, Tab 20 at Hatcher Interview, p. 7] In their interviews, Hatcher

and Purvis described Clark as a personable intern who fit in well with chambers staff. [*See id.*; Vol. I, Tab 20 at Purvis Interview, p. 4] In addition, Purvis recalled that Clark had "impeccable paralegal skills" and that she was "fabulous" at tasks like "making notebooks." [Vol. I, Tab 20 at Purvis Interview, p. 4] Hatcher likewise thought Clark did well with her intern assignments, which primarily were comprised of "discrete research" projects. [Vol. I, Tab 20 at Hatcher Interview, p. 7]

After she graduated from law school, Clark worked in the general litigation section of a Macon law firm for approximately a year and a half. [Vol. I, Tab 3, Ex. G (Clark Resume)] In the fall of 2018, while Clark was working at the law firm, Judge Royal offered her a two-year term clerkship in his Middle District chambers where she had previously interned. [Vol. I, Tab 20 at Hatcher Interview, p. 7] Clark was pregnant with her first child when Judge Royal offered her the clerkship. [*Id.*] Judge Royal and his staff, including Hatcher and Purvis, were thrilled when Clark accepted the offer and excited that Clark would be working in chambers again. [Vol. III, Tab 2 (Request for Review) at 2] Clark left her law firm in January 2019, and she began her two-year term clerkship with Judge Royal six months later, on July 5, 2019. [Vol. I, Tab 3, Ex. G (Clark Resume)]

Judge Royal hired Clark to replace his former two-year term law clerk, Anna Stangle. [Vol. I, Tab 20 at Royal Interview, p. 4] Normally, Judge Royal's term law clerks begin their clerkship at the end of August, after graduating from law school and then

taking the July bar exam. [Vol. I, Tab 20 at Hatcher Interview, p. 8] Because Clark was hired from a law firm rather than directly out of law school,[2] however, she was able to start her clerkship earlier than most term law clerks. [*Id.*] That earlier availability made it possible for Stangle to leave her clerkship a couple of months early and travel. [*Id.*] Notwithstanding her early departure, Stangle cleared her six-month motions report[3] that was due in September 2019, as was customary for Judge Royal's departing term clerks. [Vol. I, Tab 20 at Royal Interview, p. 4]

When Clark began her clerkship with Judge Royal in July 2019, it was understood that she—like all other term law clerks in Judge Royal's chambers—would be working under the tutelage of Hatcher. [*See* Vol. III, Tab 2 (Request for Review) at 2] Having served as Judge Royal's career clerk for nearly fifteen years[4] when

---

2 To be precise, Clark was not employed by a law firm immediately prior to assuming the clerkship. As Clark was pregnant when Judge Royal hired her in the fall of 2018 and as she left her law firm in January 2019, prior to beginning her clerkship in July 2019, we assume that starting in January 2019 she was taking time off from work following the birth of her first child.

3 Federal district judges are subject to a six-month motion reporting system. Per the system, motions that have been pending for six or more months are reported on a list that is released at the end of March and September of each year. District judges generally try to rule on pending motions in a timely manner, so that no motions appear on the six-month list.

4 Judge Royal hired Hatcher as his career law clerk in 2005. [Vol. I, Tab 20 at Hatcher Interview, p. 4]

Clark was hired, Hatcher had assumed a quality control role in chambers by training, mentoring, and reviewing and editing the work completed by term law clerks before it was submitted to Judge Royal. [*See id.*; Vol. I, Tab 20 at Royal Interview, p. 10] This protocol created an efficient operation for Judge Royal's chambers because Hatcher was familiar with Judge Royal's work standards and she knew what he expected in terms of a written work product. [*See* Vol. I, Tab 20 at Royal Interview, pp. 10, 41; Vol. I, Tab 20 at Purvis Interview, pp. 27-28; Vol. I, Tab 20 at Hatcher Interview, p. 5]

II. Clark works with Hatcher, without incident, in the beginning of her clerkship

Clark and Hatcher had a good working relationship for the first few months of Clark's clerkship. [*See* Vol. I, Tab 20 at Clark Interview, pp. 12-13; Vol. I, Tab 20 at Hatcher Interview, p. 10] Hatcher emphasized in her interview how much she liked Clark on a personal level, and how happy she was to have Clark back in chambers as a term law clerk. [*See* Vol. I, Tab 20 at Hatcher Interview, pp. 7, 10] Hatcher recalled that there were no apparent issues with Clark's work in the beginning of her clerkship, albeit Clark worked on what Hatcher described as "smaller"[5] motions during

---

5 In her objections to the PJO's proposed order, Clark denies that she wrote only "form" orders and alleges that she also wrote "several medium-sized proposed orders which were not 'form.'" [Vol. I, Tab 25 (Clark's Objection to Proposed Decision) at 12] We will assume this to be true.

this time period—for example, a consent motion to amend a complaint, an *in forma pauperis* ("IFP") motion, and a motion to substitute a party name—rather than larger, more substantive motions, such as summary judgment motions or motions to dismiss. [*See id.* at 11-12] This was presumably due to the fact that Judge Royal's previous law clerk Stangle had cleared her motions list before Clark started her clerkship at the beginning of July 2019. [Vol. I, Tab 20 at Clark Interview, pp. 9-10]

III. Judge Royal extends Clark's clerkship term from two to four years immediately after chambers staff returns from a November 2019 sitting with the Eleventh Circuit in Jacksonville, Florida

Judge Royal was scheduled to sit as a visiting judge with the Eleventh Circuit in Jacksonville, Florida on November 5 and 7, 2019 [Vol. I, Tab 21 (Proposed Decision), Ex. 3 at p. 1], and his chambers began preparing for the sitting in September 2019, about two months after Clark began her clerkship. [Vol. I, Tab 20 at Hatcher Interview, p. 12] Judge Royal was assigned six cases for the sitting, which were divided evenly between Hatcher and Clark. [*See id.*] To help Judge Royal get ready for the sitting, Hatcher and Clark prepared written bench memos summarizing the facts and legal issues in each case. [*See id.*; Vol. I, Tab 20 at Clark Interview, p. 15; Vol. I, Tab 20 at Royal Interview, p. 17] Hatcher and Clark spent most of September and October 2019 preparing their assigned bench memos. [Vol. I, Tab 20 at Hatcher Interview, p. 12] Clark submitted her bench memos on time, and there were no

apparent issues with the memos. [*See id.*] During this time, Clark also continued to work on "smaller . . . administrative" district court motions. [Vol. I, Tab 20 at Clark Interview, p. 14]

Hatcher and Clark traveled to Jacksonville with Judge Royal for oral arguments during the first week of November 2019. [Vol. I, Tab 20 at Hatcher Interview, p. 12] According to Hatcher, chambers staff had a great time in Jacksonville, and enjoyed Clark being there. [*See id.* at p. 13] On November 15, 2019, shortly after they returned from Jacksonville, Judge Royal offered to extend Clark's term clerkship for an additional two years, meaning that her clerkship would last a total of four years, which is the maximum amount of time a term law clerk can work for a district court judge under the governing rules. [*See id.*; Vol. III, Tab 2 (Request for Review) at 2] Judge Royal stated that although he did not believe Clark had worked on any significant district court orders at that point in time, he offered her the extension because everyone in chambers "liked her so much." [Vol. I, Tab 20 at Royal Interview, p. 38] Clark accepted the extension, and she planned to work as a term clerk in Judge Royal's chambers for the full four years. [*See* Vol. I, Tab 1 (Request for Assisted Resolution) at 1]

IV. Clark is assigned to draft an opinion in the *Pegg* case

At the Jacksonville sitting, Judge Royal was assigned responsibility for writing an opinion in the *Pegg* case, a criminal case for which Clark had written the bench memo. [Vol. I, Tab 20 at Hatcher Interview, pp. 12-13] The opinion was to be unpublished, and Judge Royal believed it would be an uncomplicated opinion for

Clark to draft. [*See* Vol. I, Tab 20 at Royal Interview, pp. 18-19] He had already directed Clark, in her bench memo, to "get the law that fits the facts" in a case that Judge Royal felt should result in an obvious affirmance. [*Id.* at 18] So, upon return to chambers after the oral argument, he assigned her the task of drafting the opinion for the panel, informing Clark that "all you have to do is dot the I's and cross the T's." [*Id.*] Judge Royal saw no reason why Clark couldn't accomplish this task within 45 days, and so he directed her to submit a draft by the end of December. [*Id.*] In late November, however, he worried that this deadline might require Clark to work over the Christmas holidays. [*Id.* at 18–19] Not wanting her to feel that pressure, Judge Royal told Clark that it would be "okay" for her to finish the draft in January. [*Id.* at 19] In short, he extended her original deadline by 30 days.

V. Clark receives a raise when her status changes from JSP 12 to JSP 13

On January 9, 2020, Middle District Human Resources specialist Brianne Sherwood informed Judge Royal that Clark was eligible to have her position elevated from a JSP 12, step 1 to JSP 13, step 1, which would result in a salary increase. [*See* Vol. I, Tab 21 (Proposed Decision), Ex. 4] The status change to JSP 13 is based on bar membership and the time a term law clerk has worked for the courts. [Vol. I, Tab 20 at Bunt Interview, pp. 9-10] Although the judge for whom a clerk works must sign off on the status change, the witnesses interviewed by the PJO agreed that the raise essentially was an automatic pay adjustment given to every term

law clerk after passage of the bar and a certain length of time in the position. [*See id.*] Judge Royal stated in his interview that he always approves these types of raises. [Vol. I, Tab 20 at Royal Interview, p. 12] And David Bunt, the Clerk of Court for the Middle District, confirmed that no judge had ever denied such a raise during his seven years as Clerk. [Vol. I, Tab 20 at Bunt Interview, p. 10] Consistent with his usual practice, Judge Royal approved the raise for Clark. [Vol. I, Tab 20 at Royal Interview, p. 12]

VI. Clark announces her pregnancy

On January 23, 2020, Clark announced to Judge Royal's chambers that she was pregnant. [Vol. III, Tab 2 (Request for Review) at 2] Having later learned that Hatcher had commented to Purvis that Clark would "never get the work done now," Clark notes that Hatcher was not pleased with the news. [*Id.* at 3] Hatcher admitted that she was not "overly excited" about Clark's announcement because, by this time, she had already expressed concerns to Purvis about Clark's work. [*See* Vol. I, Tab 20 at Hatcher Interview, pp. 17-18] Hatcher explained that Judge Royal's deadline for Clark's proposed opinion in *Pegg* was a week away, and that when she had inquired—prior to this announcement—as to the draft's status, Clark had responded that it was coming along slowly. [*Id.* at 18] Further, according to Hatcher, Clark had done "nothing of substance" in the way of district court orders. [*Id.* at 16-18] In addition, Judge Royal had upcoming panel duties with the Ninth Circuit, which Hatcher knew would increase the workload on both law clerks in chambers. [*Id.* at 24]

Clark's pregnancy subsequently was discussed during a chambers staff meeting to plan for an upcoming trip to San Francisco for Judge Royal's June 2019 sitting with the Ninth Circuit. During the meeting, a question was raised—either by Hatcher or Purvis—about whether Clark would be able to fly to San Francisco in June to attend the sitting because she would at that point be in the third trimester of her pregnancy. [*See* Vol. I, Tab 20 at Hatcher Interview, p. 25] Judge Royal asked Clark to check with her doctor to make sure traveling at that point in her pregnancy would be safe for her. [Vol. I, Tab 20 at Royal Interview, pp. 34-35] Clark subsequently advised Judge Royal that she would be able to travel to San Francisco as planned, and the issue did not come up again.[6] [Vol. I, Tab 20 at Clark Interview, pp. 20-21]

VII. Clark's draft in *Pegg* arrives two months late, and the draft requires heavy editing by Hatcher

By the end of January, Clark had still not turned in a draft in the *Pegg* case. Nervous that the Ninth Circuit work was about to arrive, Judge Royal "walked down the hall" and said, "Caitlyn, when are you going to get me something on the *Pegg* opinion?" Clark responded, "I'll have it by Friday." [Vol. I, Tab 20 at Royal Interview, p. 19] The next Friday rolled around, and there was no draft. [*Id.* at 20] A second Friday, now two weeks past the extended deadline, arrived, and still nothing. Judge Royal returned

---

6 As it turns out, the Ninth Circuit sitting was held virtually because of the Covid-19 pandemic, so no travel was required.

to her office and asked, "When are you going to get something for me on the *Pegg* opinion?" Clark's response: "I'll have it for you by Friday." [*Id.*]

Notwithstanding Judge Royal's repeated inquiries, Clark produced no draft in February, finally providing a first draft of her proposed opinion in *Pegg* on March 20, 2020, to Hatcher, whose job it was to review the draft before submitting it to Judge Royal. [*See* Vol. I, Tab 21 (Proposed Decision), Ex. 5] Clark made the submission via email because Clark, Hatcher, and Purvis had begun teleworking from home in March 2020 due to the COVID-19 pandemic. [*See id.*] Hatcher stated in her interview that Clark's first draft in *Pegg* "needed a lot of work" because it was confusing, and it was not clear from the draft that Clark had understood the issues in the case. [Vol. I, Tab 20 at Hatcher Interview, p. 28] Yet, because she knew the *Pegg* opinion was a top priority for Judge Royal at that point, Hatcher worked through her planned spring break vacation to edit Clark's draft. [*Id.*] Between March 20 and April 9, 2020, Hatcher and Clark completed several rounds of edits and exchanged numerous drafts of the *Pegg* opinion. [*Id.*] Clark finally was able to submit a final draft of the *Pegg* opinion to Judge Royal for his review on April 9, 2020: five months after having been assigned the task and over two months after the deadline for its completion. [Vol. I, Tab 21 (Proposed Decision), Ex. 8]

Clark makes several claims in her Formal Complaint and in her Request for Review that relate to her submission of the *Pegg* draft and the edits to the draft made by Hatcher between March 20

and April 9, 2020. As discussed below, because the PJO did not hold a formal hearing prior to issuing his final decision, we have construed all factual disputes in the record in favor of Clark. But several of Clark's claims about her submission of the *Pegg* draft and its revision are conclusively disproven by documents in the record, and where that is the case, we consider the facts to be undisputed. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

First, Clark does not dispute the fact that she was extremely tardy in completing her draft in *Pegg*. As noted, she submitted her initial draft to Hatcher almost two months beyond an already extended two-month deadline. Nor has she disputed Judge Royal's assertion that once she had missed her deadline, the judge "began asking Mrs. Clark for updates on its status" and Clark "continuously told him throughout February and March she would 'turn it in by Friday,' but he did not receive the proposal until the beginning of April." [Vol. I, Tab 21 (Proposed Decision) at 5–6]

As for providing an explanation for this delay, in her interview Clark placed much of the blame on Hatcher, whom Clark said held onto the initial draft for a substantial period of time before approving its submission to Judge Royal. [*See* Vol. I, Tab 20 at Clark Interview, pp. 16–17, 44, 47] In addition, she asserts that the *Pegg* opinion was complicated and required a long period of time

to complete. We will address at greater length the alleged complexity of the *Pegg* assignment in our discussion of pretext below. As a factual matter, however, Clark's effort to blame Hatcher for the delay in submitting the *Pegg* draft is contradicted by the documentary evidence. As the PJO noted, Clark falsely suggested in her interview that Hatcher was to blame for the tardiness of the *Pegg* draft when she stated, incorrectly, that Hatcher had "held on to [her submitted draft] all of February." [*See* Vol. I, Tab 28 (Final Decision) at 7] The documentary evidence shows instead that Clark did not send Hatcher a first draft in *Pegg* until March 20, 2020. [Vol. I, Tab 21 (Proposed Decision), Ex. 6][7]

In her Request for Review, Clark takes issue with the PJO's determination that she was untruthful in her interview about the date she submitted the *Pegg* draft. [*See* Vol. III, Tab 2 (Request for Review) at 8] Clark suggests that if she had been able to access her emails and other work product while she worked for Judge Royal, she could have refreshed her memory as to that fact. [*See id.*] We share the PJO's skepticism that the absence of discovery can be blamed for Clark's misstatement. Clark's clerkship lasted 14 months, and for five of those months she was purportedly working on the *Pegg* opinion. She missed the original January deadline,

---

[7] Also commented upon by the PJO, Clark implied that the length and complexity of the *Pegg* opinion justified the delay when she stated in her interview that her draft was 40 pages long. [*See* Vol. I, Tab 28 (Final Decision) at 8] In fact, Clark's first draft in *Pegg*—a copy of which is in the record—was only 26 pages long. [Vol. I, Tab 21 (Proposed Decision), Ex. 6]

after which Judge Royal regularly inquired when the draft would be finished, and she regularly responded that it would be finished by the end of the week. Yet, Clark did not complete her draft and deliver it to Hatcher until March 20, almost two months after the deadline.

Clark's inability to complete the *Pegg* draft was a source of great tension and consternation in chambers. [*See* Vol. I, Tab 20 at Purvis Interview, pp. 6, 11–12, 16; Vol. I, Tab 20 at Hatcher Interview, pp. 16, 24, 27–28, 29] Whether or not Clark remembered the exact date she transmitted the draft to Hatcher, it is hard to understand how she could fail to remember that it was her delay—not Hatcher's—that represented the bulk of time it took to get the opinion to the judge.

As to Clark's suggestion that Hatcher "held onto" the draft, that characterization is belied by the record. Clark emailed the draft to Hatcher on Friday, March 20. Hatcher obviously spent the weekend working on the draft as, by the next Monday, March 23, Hatcher had turned around a heavily-edited draft for Clark to use in her revisions. It took Clark five days—until Friday, March 27—to make those suggested revisions. By Tuesday, March 31, Hatcher had made further revisions on that draft. Two days later, on April 2, Clark further revised the draft and Hatcher edited that draft the same day. Clark turned that draft around on Saturday, April 4. More revisions went back and forth between the two between April 4 and April 9, and on April 9 Clark transmitted her draft opinion in *Pegg* to Judge Royal. [Vol. I, Tab 21 (Proposed Decision),

Exs. 5-6, 8] Thus, one cannot infer that Hatcher dragged her feet in trying to help Clark finalize the draft.

Clark also questions the need for Hatcher's revisions, calling Hatcher's suggested edits "unreasonable" and "busy-work" and accusing Hatcher of adding to Clark's workload unnecessarily by having her delete and add back material to the draft. [Vol. I, Tab 3 (Formal Complaint) at 4] Based on our review of the relevant documents—specifically, the successive versions of the *Pegg* draft that are in the record, along with Hatcher's inked revisions—Clark's characterization could not be further from the truth. [*See* Vol. I, Tab 21 (Proposed Decision), Exs. 5-6] The PJO determined that Hatcher's edits in *Pegg* were "thoughtful and constructive" and he noted that Clark had emailed Hatcher at the end of the editing process to thank her for her help with the draft, stating in the email that Hatcher's work was "Extremely Clear!" and further commenting, "I wish I could do this like you do!" [Vol. I, Tab 28 (Final Decision) at 20] We agree with the PJO's assessment of Hatcher's edits, and we add that in some instances the edits were not only constructive, but necessary.

Finally, Clark suggests in her Formal Complaint that Hatcher's communications—about the *Pegg* revisions and about Clark's other written work—were "[c]ombative" and "insulting." [Vol. I, Tab 3 (Formal Complaint) at 4] At least with regard to the *Pegg* drafts that Hatcher and Clark exchanged between March 20 and April 9, 2020, Clark's characterization of Hatcher's communications is again belied by the documents in the record. [*See* Vol. I,

Tab 21 (Proposed Decision), Exs. 5-6] Because of the unusual circumstances created by the COVID-19 pandemic—namely, the teleworking triggered by the pandemic and the fact that Hatcher and Clark were required to communicate during the relevant time period via email messaging—there is a written record of Hatcher and Clark's communications regarding the *Pegg* revisions, which includes inked revisions by Hatcher and contemporaneous email messages about the successive drafts of *Pegg* that emerged from the revision process. [*See id.*] Like the PJO, we have reviewed all the drafts and messages Hatcher and Clark exchanged between March 20 and April 9, 2020, while the *Pegg* revisions were circulating, and we have not found a single message from Hatcher that corroborates Clark's characterization of those communications as combative or insulting.

On the contrary, Hatcher's written communications to Clark concerning the *Pegg* case during the relevant time period were—without exception—respectful and encouraging. [*See id.*] Clark attached her first draft in *Pegg* to an email in which she stated, "Please see attached. Thank you, Sally!!" [*Id.*] Hatcher responded three days later with a heavily edited version of the draft and an email stating, "Call me when you get this and can talk!" [*Id.*] About a week later, and after another round of edits, Hatcher sent Clark an email stating, "Hey Caitlyn! I think this draft is SO MUCH better!!! I'm done for today (I'm BEAT!) but email me tomorrow and we'll find a time to talk and go through it! Hope you have a great evening!" [*Id.*] Hatcher's email messages continued in the

same vein throughout another week of edits, concluding with two messages to Clark on April 9, 2020, the first of which stated, "We're almost done! Just a few very minor things to look at. Yay! We can talk whenever!" and the second of which stated, "Congrats Caitlyn!!!! Woo Hoo!!!!" [*Id.*]

VIII. Judge Royal requests funding from the Clerk of Court to assist with his workload

By the time Clark submitted the final draft of her proposed *Pegg* opinion on April 9, 2020, Judge Royal had already informed the Clerk of Court, David Bunt, that one of his law clerks was struggling with her workload, that the work in chambers was "piling up," and that he "needed some help." [Vol. I, Tab 20 at Bunt Interview, p. 3] In late March 2020, Judge Royal sought Bunt's advice as to options for him to get additional help. [*Id.*]

Judge Royal explained that by March he was becoming "desperate," given Clark's apparent inability to generate a draft opinion in *Pegg* and given the upcoming Ninth Circuit sitting. He felt that he was facing a "crisis" because Clark "c[ould]n't do her work." [Vol. I, Tab 20 at Royal Interview, pp. 5, 20] Bunt suggested that Judge Royal apply to the Eleventh Circuit Judicial Council for temporary emergency funding to hire immediately a third law clerk. [Vol. I, Tab 20 at Bunt Interview at 3-4] Even though Judge Royal's workload met the threshold for him to have three law clerks, he had not required more than two law clerks after taking senior status and had not requested a third clerk for the year Clark served. [*See id.*; Vol. I, Tab 20 at Royal Interview, p. 51]

Although he had "never done anything like this before," [Vol. I, Tab 20 at Royal Interview, p. 5] Judge Royal authorized Bunt to send a request to the Circuit Executive of the Eleventh Circuit for approval of temporary emergency funding for a third law clerk, as well as a request for a permanent third law clerk position for Judge Royal for the next fiscal year. [Vol. I, Tab 21 (Proposed Decision), Ex. 7] Bunt did so on April 8, 2020. [*Id.*] In an accompanying letter, Judge Royal stated that the reason for the request was "unanticipated additional workload." [*Id.*] During his interview, Judge Royal explained that "the unanticipated additional workload was not that we had more work; it was that Caitlyn wasn't getting the work done." [Vol. I, Tab 20 at Royal Interview, pp. 5–6] Judge Royal also called the chief judge of the Eleventh Circuit, Judge Ed Carnes, to ask that his request be expedited so that he could immediately obtain some help. [*Id.* at 21]

Judge Royal's request for additional help was granted on April 14, and he hired a prior law clerk, Jennifer Findley, as a temporary clerk to help get the work done. [*Id.* at 20-21] Findley was able to work "half-time," and Judge Royal planned for her to help him with Ninth Circuit work. [*See* Vol. I, Tab 21 (Proposed Decision), Ex. 3 at p. 3] Findley was pregnant when Judge Royal hired her, and she worked for him from mid-April until September, when her baby was born. [*Id.*; Vol. I, Tab 20 at Royal Interview, pp. 20-21]

IX. Judge Royal meets with Clark on April 14, 2020 to discuss her work performance

On April 13, 2020, Judge Royal reviewed the final version of the *Pegg* draft with Clark and Hatcher, and he then sent the proposed opinion to Judges Jill Pryor and Britt Grant, the Eleventh Circuit judges who were on the panel. [*See* Vol. I, Tab 21 (Proposed Decision), Ex. 9] On the next day, April 14, Judge Royal invited Clark and Purvis to his house to discuss his concerns about Clark's work and to advise her about the addition of Findley to chambers staff. [*See* Vol. I, Tab 20 at Royal Interview, pp. 23-24] Judge Royal stated in his interview that he "made it very clear" during the April 14 meeting that Clark "was in big trouble." [*Id.* at 25] More specifically, Judge Royal told Clark that he was unhappy about her delay in *Pegg* and about the backlog of motions accumulating on her list. [*See id.* at 23-25] Judge Royal explained to Clark that lawyers "hate waiting on motions" and that his chambers had to get the work out in a timely manner. [*See id.*] In addition, Judge Royal told Clark that he had eighteen years of experience with law clerks and knew what law clerks were supposed to do, and that Clark was not meeting that standard. [*Id.* at 23] Clark does not dispute that Judge Royal made clear how dissatisfied he was with her work, and she even told Hatcher in a contemporaneous email that she had never "got[ten] such a bad performance review" as she received in

her discussion with Judge Royal on April 14, 2020. [*See* Vol. I, Tab 21, Ex. 12]

X. After Clark's meeting with Judge Royal on April 14, 2020, Clark and Hatcher have a phone conversation during which Hatcher loses her temper and expresses frustration with Clark

Later in the day on April 14, 2020, after Clark's meeting with Judge Royal and Purvis at Judge Royal's house, Hatcher emailed Clark about an order ruling on an IFP motion that Clark had drafted. [Vol. I, Tab 21 (Proposed Decision), Ex. 10] In reviewing the draft order, Hatcher had gone to the docket and noticed that Clark had failed to address two additional motions in the case, as well as a motion to amend the complaint. [*See id.*] Clark responded that she had seen the motions but had ignored them because she "wasn't sure what to do with them." [*See id.*] Obviously frustrated, Hatcher responded that Clark "can't just leave motions hanging on because you don't know what to do with them," and she indicated that Clark should contact her about such matters. [*See id.*] Clark apologized and the email exchange concluded so that the two could talk on the telephone about the case. [*See id.*]

Clark alleges that during the follow-up phone call that occurred later that same day, Hatcher stated that she was "infuriate[ed]" that Clark was pregnant and that she believed Clark's baby was going to get in the way of her son's senior year of high school and require her to travel to Athens the following year, which Hatcher did not want to do. [Vol. III, Tab 2 (Request for Review)

at 3-4] Hatcher admitted during her interview that she lost her temper during the phone call, and that she expressed frustration with Clark about her increasing workload amidst an approaching maternity leave. [*See* Vol. I, Tab 20 at Hatcher Interview, pp. 36-39] We assume that Hatcher made the other statements alleged by Clark as well.

After her phone conversation with Clark on April 14, Hatcher called Judge Royal, reported what she had said to Clark, and apologized for losing her temper. [Vol. I, Tab 20 at Royal Interview, pp. 26-27] Hatcher told Judge Royal that she had also apologized to Clark. [*Id.*] Clark also attempted to contact Judge Royal after the April 14 phone conversation by sending him a text message asking if she could return to his house to talk. [Vol. I, Tab 3 (Formal Complaint) at 7] Judge Royal told Clark he would call her the next day. [*Id.*] During their follow-up conversation on April 15, Clark summarized to Judge Royal the phone conversation she had with Hatcher the previous day. [*Id.* at 8] Knowing that Hatcher had already apologized to Clark, Judge Royal did not believe any further action was necessary. [Vol. I, Tab 20 at Royal Interview, pp. 26-27]

XI. After he receives Judge Jill Pryor's suggested corrections to the *Pegg* opinion, Judge Royal contacts a UGA professor seeking a recommendation for a term law clerk to begin in September, and he hires Matthew Hall

On April 15, 2020, Judge Royal received a redlined version of the *Pegg* opinion from Eleventh Circuit Judge Jill Pryor in which

she suggested some revisions. [Vol. I, Tab 21 (Proposed Decision), Ex. 11] Judge Pryor stated in an email accompanying her redlined version of the *Pegg* opinion that she had proposed substantive edits to two sections of the draft. [*Id.*] One edit was made because Judge Pryor believed that the proposed opinion had not fully captured a nuance of the defendant's argument on a suppression issue raised in the case. [*See id.*] The other substantive edit was to the prosecutorial misconduct section of the opinion, in which the defendant had argued that by urging the jury to put itself in the defendant's position, the prosecutor had made an improper statement. [*See id.*] The proposed opinion had concluded that this statement was improper, but not prejudicial enough to affect the outcome of the trial. The suggested edit noted the distinction between asking the jury to put itself in the position of a defendant as opposed to a victim, but concluded that, even with an assumption that the remark was improper, it was harmless. [*See id.*] Judge Pryor's redlined suggestions also deleted the proposed opinion's citation to a case citing the standard for assessing an improper prosecutorial statement under habeas corpus review, which standard is different from that applicable to a case on direct appeal, as was Pegg's case. [*See id.*]

In addition to the substantive edits, Judge Pryor's redlined version of the *Pegg* opinion corrected several citation errors in the draft, including one error that Hatcher had pointed out to Clark during the in-chambers revision process, but that Clark had failed

to correct.[8] [*Id.*] Harkening back to an issue that had just arisen the day before concerning the IFP case, Judge Pryor also added a line to the *Pegg* proposed opinion to rule on a motion that was pending in the case and that Clark had failed to address in the opinion. [*Id.*] Other than these matters, Judge Pryor indicated that she thought it was "a terrific draft opinion." [*Id.*]

Judge Royal stated in his interview that he was "deeply embarrassed" by "all of the errors that had been made" in the *Pegg* draft. [Vol. I, Tab 20 at Royal Interview, p. 6] Although Hatcher was responsible for editing the *Pegg* opinion to ensure that the writing met Judge Royal's standards, Hatcher had no duty—and presumably no time—to check cites, search the record, or do the independent research that would have been necessary to catch all of the above errors identified by Judge Pryor. [*See id.* at 10]

On April 16, 2020, the day after he received the redlined edits in *Pegg* from Judge Pryor, Judge Royal contacted a University of Georgia Law School professor to discuss potential candidates for an additional law clerk to work in his chambers starting in September. [Vol. I, Tab 21 (Proposed Decision), Ex. 3 at p. 3] A few days later, on April 22, Judge Royal interviewed and hired Matthew Hall, the candidate recommended by the professor with whom

---

[8] Specifically, Hatcher indicated that Clark should cite published authority for a legal proposition, instead of unpublished authority. [*See* Proposed Decision at Ex. 6, March 31 draft] Nevertheless, Clark left her citations to unpublished authority in the final draft, and Judge Pryor suggested deleting the citations. [*See id.* at Ex. 11]

Judge Royal had spoken a few days prior. [Vol. III, Tab 2 (Request for Review) at 4] Judge Royal stated in his interview that with his hiring of Hall as a third clerk, there would be three clerks when Clark returned from maternity leave. [Vol. I, Tab 20 at Royal Interview, pp. 3, 15-16] Judge Royal explained that he hired Hall "to fill the gap because [Clark] couldn't get the work done." [*Id.* at 2-3]

XII. The Eleventh Circuit reverses Judge Royal's IFP ruling in the *Adams* case on June 12 and Judge Royal reduces Clark's clerkship term from four to two years, but offers her twelve weeks of maternity leave

The next event noted in the record occurred on June 12, 2020, when the Eleventh Circuit issued a decision reversing Judge Royal's order denying an IFP motion in *Adams v. Office of the Governor*, 818 F. App'x 887 (June 12, 2020). Clark had drafted this Order. Pursuant to Clark's recommendation, the order granted the *pro se* plaintiff's motion to proceed *in forma pauperis*, but sua sponte dismissed the plaintiff's § 1983 Fourth Amendment claims with prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii), concluding that the plaintiff's complaint failed to assert a viable Fourth Amendment violation and that amending the complaint would be futile under the *Rooker-Feldman* doctrine. *See Adams*, 818 F. App'x at 888. In relevant part, the Eleventh Circuit held that Judge Royal had erred by dismissing the plaintiff's Fourth Amendment claim for unlawful seizure of his personal property during a traffic stop because the dismissal order had failed to "specifically address whether

there was probable cause for the seizure." *See id.* at 889. In addition, the Eleventh Circuit determined that Judge Royal had erred by concluding that an amendment to the plaintiff's complaint would be futile pursuant to the *Rooker-Feldman* doctrine. *See id.* at 890.

Clark acknowledged in an email message she sent to Hatcher that Judge Royal was upset about the reversal in the *Adams* case. In a message Clark sent to Hatcher on June 17, 2020, Clark stated that Judge Royal "was in a bad mood [a few days prior] because of [Clark's] IFP that got reversed." [Vol. I, Tab 21 (Proposed Decision), Ex. 12] Clark explained that Judge Royal had said "it was particularly bad because Judge Anderson was on the panel."[9] [*Id.*] Subsequently, on June 23, Judge Royal met with Clark and rescinded his offer of an additional two-year term to Clark's clerkship. [Vol. III, Tab 2 (Request for Review) at 4] Judge Royal stated in his interview that he reduced Clark's clerkship back to the original two-year term because "she was doing a very poor job." [Vol. I, Tab 20 at Royal Interview, p. 29]

During this June 23 conversation with Judge Royal, Clark raised the issue of her upcoming maternity leave. [*See* Vol. I, Tab 20 at Clark Interview, p. 33] Clark acknowledged to the judge that she was not eligible for leave under the FMLA (the acronym for the Family Medical Leave Act), but nonetheless requested six weeks of

---

[9] Judge R. Lanier Anderson is a senior judge on the Eleventh Circuit whose chambers are in the same Macon federal courthouse as Judge Royal's.

leave following delivery to get the baby on a schedule and enrolled in daycare. [*See id.*] Judge Royal volunteered to give Clark the full 12 weeks she would be entitled to if she were covered by the FMLA, but said that the leave would be unpaid, as Clark was not on the leave system and thus not eligible for paid leave. [*See id.*] Accepting Judge Royal's offer, Clark planned to take 12 weeks off after the birth of her child. [*See id.* at 33–34]

XIII. Between April and August of 2020, Purvis gave Judge Royal three reports, each of which indicated that Clark was accumulating a backlog of undecided motions on her list of pending work

While the above events were happening, and beginning in early April 2020, Judge Royal received updates from Purvis regarding Clark's progress clearing pending motions from her list of work that she was assigned to complete. On April 8, 2020, Purvis sent a report to Judge Royal indicating that Clark had 16 pending motions on the current six-month list, including four summary judgment motions and four motions to dismiss, while Hatcher had seven pending motions, including three motions for summary judgment and one motion to dismiss. [*See* Vol. I, Tab 21 (Proposed Decision), Exs. 3, 13 and Vol. I, Tab 20 at Purvis Interview, p. 13] On July 17, 2020, Judge Royal learned from Purvis that Clark had 22 pending motions on her list of uncompleted work, while Hatcher had three such pending motions. [*See* Vol. I, Tab 21 at Exs. 3, 14 and Vol. I, Tab 20 at Purvis Interview, p. 22] Finally, on August 12, 2020, Purvis reported to Judge Royal that Clark had 27 motions

pending, while Hatcher had two. [*See* Vol. I, Tab 21 at Ex. 3 and Purvis Interview, p. 22] Thus, via Purvis's reports, Judge Royal became aware that Clark's number of undecided motions kept mounting, despite the judge's warning to Clark on April 14, 2020 that "the work has to get out" in a timely manner. [*See* Vol. I, Tab 20 at Royal Interview, p. 23]

XIV. Judge Royal terminates Clark's employment

On August 18, 2020, six days after receiving the August motions report from Purvis, Judge Royal had a meeting with Clark and Bunt, during which Judge Royal informed Clark that her clerkship would be terminated after she received twelve weeks of paid maternity leave. [Vol. III, Tab 2 (Request for Review) at 4] As noted above, Clark was not entitled to paid leave. [*See* Vol. I, Tab 20 at Clark Interview, p. 33] Nevertheless, having decided to terminate Clark's employment, Judge Royal wanted to ensure that Clark had enough notice, remained covered by health insurance, and was able to be paid for a period of time following the birth of her child. [*See* Vol. I, Tab 20 at Royal Interview, pp. 14-15] Thus, Clark's employment officially terminated on November 20, 2020, twelve weeks after she went out on maternity leave in late August. [Vol. III, Tab 2 (Request for Review) at 4] Matthew Hall began his clerkship in September. [Vol. III, Tab 2 (Request for Review) at 4]

According to Hatcher's records, four clerks handled pending substantive motions[10] that had been assigned to Clark. [*See* Vol. I, Tab 20 at Hatcher Interview, pp. 51-52 and "Caitlyn Work" attachment, p. 6] Amanda Smith, a law clerk for Judge Lawson, who was a colleague of Judge Royal's, volunteered her assistance and drafted the order in one case involving a summary judgment motion. [*See id.*] Jennifer Findley, the temporary third clerk hired by Judge Royal in April, had drafted the order for another summary judgment case. [*See id.*] Matthew Hall wrote the order on a motion to dismiss in another case after he arrived. [*See id.*] Sally Hatcher was reassigned the summary judgment and dismissal motions in the remaining three cases. [*See id.*] According to Judge Royal, through the work of these four clerks, his chambers was able to clear the backlog of work left by Clark, and Hatcher and Hall were able to handle the work going forward. For that reason, it became unnecessary for him to hire a third law clerk, notwithstanding his authorization to do so. [*See* Vol. I, Tab 20 at Royal Interview, pp. 7-8, 51]

XV. Clark and Hatcher regularly communicate by email messages throughout the relevant time period

The record shows that Hatcher and Clark regularly communicated by email throughout the relevant time period, and the

---

10 From our review of the records provided, we understand the term "substantive motion" to generally refer to a dispositive motion, such as a motion for summary judgment, motion for judgment on the pleadings, or motion to dismiss.

email exchanges that have been attached to the record are consistently respectful and friendly. For example, on April 16, 2020, just a few days after the April 14 phone conversation discussed above, Hatcher sent an email to Clark stating, "If you need to discuss anything or want to talk any issues through, please know that I am available. Also, I am more than happy to talk about how to work through the appeal issue or how to do the memo, if you need it." [Vol. I, Tab 21 (Proposed Decision), Ex. 16] Clark responded, "Thank you!" [*Id.*] Hatcher and Clark's communications continued in a similar vein throughout the last four months of Clark's clerkship, with Hatcher emailing to Clark several times during this time period with offers of help and encouraging words about her work and Clark responding by thanking Hatcher for her assistance. [*Id.*] In her final message to Clark on August 21, 2020, Hatcher referenced a draft order Clark had submitted and stated:

> "Hey Caitlyn! I thought you did a good job on this. Here are a few suggested edits. It feels weird not to say goodbye to you in person. I do wish you all the best, Caitlyn. And I'm praying for you to have a smooth delivery and healthy baby girl! Take care!!"

[*Id.*]

XVI. Clark seeks relief under the Middle District's EDR Plan

After starting her maternity leave, Clark telephoned Clerk of Court Bunt in early September 2020 and sought his assistance. During their conversation, Clark told Bunt that she wanted him to

give her her job back. [Vol. I, Tab 20 at Bunt Interview, p. 7] Bunt advised Clark that he had no authority to do that because term law clerks work at the will of their hiring judge. [*Id.*] But on September 14, 2020, within days of Clark's conversation with Bunt, the Middle District of Georgia adopted the EDR Plan that is the basis for Clark's complaint. [Vol. III, Tab 2 (Request for Review) at 5] The newly adopted plan included term law clerks as employees within its protections. [*Id.*]

Clark filed a Request for Assisted Resolution on December 3, 2020, in which she alleged that: (1) her clerkship term was reduced and she was terminated on account of her pregnancy, (2) she was harassed and subjected to abusive conduct in chambers due to her pregnancy, and (3) Judge Royal retaliated against her for reporting the wrongful conduct. [*See generally* Vol. I, Tab 1 (Request for Assisted Resolution)] In her request, Clark asked for a positive letter of recommendation and reinstatement to a comparable position. [*Id.*] Chief Judge Marc Treadwell recused himself and appointed Judge Clay Land to handle the matter. [*Id.*] After speaking with Clark, Hatcher, and Judge Royal, Judge Land concluded that the matter could not be resolved by Assisted Resolution and he issued a report to that effect on December 14, 2020. [Vol. I, Tab 2 (Notice of Termination of Assisted Resolution)] In conjunction with Judge Land's report, the Middle District's EDR coordinator at the time, Brianne Sherwood, notified Clark of her right to file a formal complaint under the EDR Plan. [*See id.*]

Clark filed a Formal Complaint on February 11, 2021. [*See* Vol. I, Tab 3 (Formal Complaint)] Chief Judge William Pryor appointed Chief Judge J. Randal Hall of the Southern District of Georgia as the PJO to act on behalf of the Eleventh Circuit Judicial Council to resolve Clark's claims. [*See* Vol. I, Tab 4 (Letter Appointing PJO)] Based on his review of Clark's Complaint and the Middle District's Response, the PJO determined that an investigation concerning Clark's claims was necessary. [*See* Vol. I, Tab 28 (Final Decision) at 2-3] He scheduled interviews for Clark, Hatcher, Purvis, Bunt, and Judge Royal over a two-day period in early April 2020 in Dublin, Georgia, and he advised the interviewees to provide him with any documents relevant to the investigation. [*Id.* at 3] Per the PJO's request, Hatcher produced copies of her email conversations with Clark during the relevant time period and the successive versions of the *Pegg* draft discussed above, and Judge Royal produced a timeline related to Clark's clerkship and notes regarding Purvis's reports as to Clark's progress on her pending motions. [*See* Vol. I, Tab 21 (Proposed Decision), Exs. 3, 5-6, 8-17]

After conducting interviews and reviewing the relevant documents, the PJO issued a proposed decision in which he concluded that Clark had no meritorious claim against the Middle District for pregnancy discrimination, hostile work environment, abusive conduct, or retaliation, and that a formal hearing was not required to resolve the matter. [Vol. I, Tab 21 (Proposed Decision) at 1] The PJO notified the parties of the proposed decision, provided them

with the exhibits and transcripts of the interviews on which he had relied in ruling on Clark's claims, and gave them an opportunity to file objections. [*See* Vol. I, Tab 28 (Final Decision) at 3] Clark submitted written objections, to which she attached her contemporaneous notes summarizing the telephone conversation she had with Hatcher on April 14, 2020.[11] [*See* Vol. I, Tab 25 (Clark's Objection to Proposed Decision)]

The PJO considered Clark's objections and the newly produced document, and issued a final written decision, in which he again concluded that Clark's claims lacked merit. [Vol. I, Tab 28 (Final Decision) at 3-4] Clark has filed a Request for Review of the PJO's final decision by this Council, in which she argues that the PJO erred by: (1) concluding that she did not produce evidence that she was treated less favorably than or replaced by an employee who was not pregnant, (2) concluding that the Middle District had articulated a legitimate, nondiscriminatory reason for terminating Clark, which Clark failed to rebut with credible allegations showing pretext, and (3) finding that Clark had failed to show the requisite causal link between Clark's protected conduct and the adverse employment actions taken against her, for purposes of the retaliation claim. [Vol. III, Tab 2 (Request for Review) at 10-21] In addition, Clark argues in her Request for Review that the PJO erred in

---

11 The notes were in the form of an email addressed to Judge Royal, but Clark explained in her interview that she had not sent the email to Judge Royal, but rather had used it as talking points in the follow-up conversation she had with Judge Royal on April 15, 2020. [Vol. I, Tab 20 at Clark Interview, p. 30]

his rulings on her hostile work environment and abusive conduct claims. [*Id.* at 22-29] Finally, Clark claims that the PJO erred by denying her a formal hearing and an opportunity for discovery and cross-examination, and that he failed to act impartially in ruling on her claim. [*Id.* at 7-10]

DISCUSSION

I. Standard of Review

The PJO notes in his final decision that the standard of proof for all claims under the Middle District's EDR Plan is preponderance of the evidence. [Vol. I, Tab 28 (Final Decision) at 4, n.6] That is the same standard that would apply to Clark's pregnancy discrimination claims under Title VII. *See Young v. United Parcel Serv., Inc.*, 575 U.S. 206, __ , 135 S. Ct. 1338, 1345 (2015) (noting that the preponderance of evidence standard applies to a disparate treatment pregnancy discrimination claim asserted under Title VII). However, because the PJO resolved Clark's claims without a formal hearing or other procedures that would attend a trial such as the right to cross-examination, we apply a standard on review that is akin to a summary judgment standard. That is, we assume Clark's well-founded allegations are true, and where there is a dispute of fact in the evidentiary record, we construe the record in favor of Clark.[12] We then consider whether there is "substantial

---

12 *See* EDR Plan § IV.C.3.f.ii. Although the PJO used the term "findings of fact" in describing his recitation of the pertinent facts, [Vol. I, Tab 28 (Final

evidence" to support the PJO's decision that Clark failed to assert a meritorious claim against the Middle District for wrongful discrimination, harassment, abusive conduct, or retaliation. *See* EDR Plan § V.A.

II. Clark's Pregnancy Discrimination Claim

The Middle District's EDR Plan prohibits "wrongful conduct" during an employee's period of employment, and it defines such wrongful conduct to include "[a] discriminatory adverse employment action against an employee based on that employee's . . . pregnancy[.]" Middle District of Georgia Employment Dispute Resolution Plan ("EDR Plan") § II.A.1. The Plan further defines an adverse action as "an action that materially affects the terms, conditions, or privileges of employment, such as hiring, firing, or a failure to promote." EDR Plan at App. 1. As relevant here, the language of the Plan tracks Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978. *See* 42 U.S.C. §§ 2000e-2(a)(1), 2000e(k) (prohibiting discrimination based on "sex" and defining sex to include "pregnancy, childbirth, or related medical conditions"); *see also Holland v. Gee*, 677 F.3d 1047, 1054 (11th Cir. 2012) (noting that Title VII "prohibits employment discrimination on the basis of sex" and that the "Pregnancy Discrimination Act amended Title VII to provide that discrimination on the basis of sex includes discrimination on the basis of

---

Decision) at 4], the facts on which he relies appear to be largely undisputed. At any rate, we have applied the standard stated in text.

pregnancy"). The Plan provides that, in reaching a decision on a formal complaint filed under its provisions, the PJO "should be guided by judicial and administrative decisions under relevant rules and statutes, as appropriate." EDR Plan § IV.C.3.e.vi. The relevant authority here is Title VII, as amended by the Pregnancy Discrimination Act, and the caselaw interpreting that statute.

Clark claims the Middle District discriminated against her based on her pregnancy when Judge Royal reduced her clerkship from four years to two years on June 23, 2020, and when he terminated her employment on August 18, 2020, which termination became effective at the end of Clark's paid maternity leave on November 20, 2020. [Vol. I, Tab 3 (Formal Complaint) at 13-15] We note at the outset that Clark's discrimination claim based on the reduction of her clerkship term is time-barred. The EDR Plan requires a formal complaint to be submitted to an EDR coordinator "within 180 days of the alleged wrongful conduct or within 180 days of the time the employee becomes aware or reasonably should have become aware of such wrongful conduct." EDR Plan § IV.C.3.a. Clark alleges that her clerkship term was reduced from four to two years on June 23, 2020, but she did not submit her Formal Complaint to EDR Coordinator Sherwood until February 11, 2021, well beyond the 180-day deadline from the time of the alleged wrongful conduct. The Plan makes clear that Clark's Request for Assisted Resolution, submitted on December 4, 2020, did not toll or extend the 180-day deadline. *See id.* Thus, while we will consider Judge Royal's decision to reduce Clark's clerkship term to the

extent the decision is relevant to Clark's discriminatory termination claim, we **AFFIRM** the PJO's denial of Clark's claim based on the reduction of her clerkship term because any such claim is time-barred.[13]

As for her termination claim, none of Clark's allegations amount to direct evidence that she was terminated based on her pregnancy. Clark argues that her conversation with Hatcher on April 14, 2020 is "direct evidence" that "cast[s] doubt on" what could otherwise be characterized as a legitimate reason by Judge Royal for terminating her: her unsatisfactory work production. [*See* Vol. III, Tab 2 (Request for Review) at 19] Yet, Clark does not appear to be arguing that her conversation with Hatcher constitutes direct evidence of discrimination because her argument is framed in terms of the *McDonnell Douglas* analysis, which only applies when there is no direct evidence of discrimination. [*See id.*] But to the extent Clark intends to make a direct evidence argument, we reject it. Hatcher's statements cannot constitute direct evidence of discrimination because, as will be discussed in more detail below, Hatcher was not the final decision-maker with respect to Clark's termination. *See Damon v. Fleming Supermarkets of Florida, Inc.*, 196 F.3d 1354, 1359 (11th Cir. 1999) (explaining that

---

[13] Of course, that Judge Royal had earlier reduced Clark's clerkship term to two years prior to firing her is irrelevant if her challenge to the termination decision is deemed unmeritorious. Because we conclude that Clark failed to prove that she was terminated because she was pregnant, the earlier decision to reduce her clerkship term becomes a moot point.

direct evidence "must indicate that the complained-of employment decision was motivated by the decision-maker's" discriminatory animus) (emphasis added); *see also Holland*, 677 F.3d at 1055 (defining direct evidence as "evidence that, if believed, proves the existence of a fact without inference or presumption"). The PJO thus correctly applied the *McDonnell Douglas* burden-shifting framework to determine whether Clark could prevail on her pregnancy discrimination claim against the Middle District based on circumstantial evidence. *See Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1220 (11th Cir. 2019) ("In order to survive summary judgment, a plaintiff alleging intentional discrimination must present sufficient facts to permit a jury to rule in her favor. One way that she can do so is by satisfying the burden-shifting framework set out in *McDonnell Douglas*.").

Pursuant to the *McDonnell Douglas* framework, Clark has the initial burden to establish a prima facie case of discrimination by showing that (1) she belongs to a protected class, (2) she suffered an adverse employment action with respect to her position with the Middle District, (3) she was qualified for her position at the time of the adverse action, and (4) an employee outside of Clark's protected class replaced or was treated more favorably than Clark.[14]

---

14 We note that the elements of a prima facie case of pregnancy discrimination have been modified in situations where an employer has refused to provide a job accommodation requested by a pregnant employee that the employer provided to non-pregnant employees who were "similar [to the pregnant employee] in their ability or inability to work." *See Durham v.*

See id. at 1220–21. The burden then shifts to the respondent Middle District to articulate a legitimate, nondiscriminatory reason for the challenged employment decision. *See id.* at 1221. Assuming the Middle District satisfies that requirement, the burden shifts back to Clark to show that the District's proffered reason was not the real basis for the decision, but a pretext for pregnancy discrimination. *See id.*

A. Clark's Prima Facie Case

The PJO determined that Clark had established the first three elements of a prima facie case of pregnancy discrimination, but that her allegations did not support the final element because Clark could not show that a comparator employee—that is, an employee who was not pregnant and who was thus outside Clark's protected class—replaced or was treated more favorably than Clark. [*See* Vol. I, Tab 28 (Final Decision) at 14-16] Clark argues in her Request for Review that Judge Royal's career law clerk, Sally Hatcher, as well as his term law clerk and Clark's alleged replacement, Matthew Hall, are valid comparators who were treated

---

Rural/Metro Corp., 955 F.3d 1279, 1285 (11th Cir. 2020) (quoting *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 229 (2015)). This case does not involve—and Clark never requested—a pregnancy-related accommodation, such as the light duty requested by the plaintiff in *Durham* or the waiver of a lifting requirement requested by the plaintiff in *Young*. Thus, we apply the traditional elements of a prima facie case of discrimination under *McDonnell Douglas.*

more favorably than Clark with respect to her termination. [Vol. III, Tab 2 (Request for Review) at 11-15]

We will assume that Matthew Hall, the term law clerk hired just before Clark was terminated, can serve as a comparator.[15] As a male, Hall was obviously not pregnant and was thus outside Clark's protected class. The PJO concluded that Hall was not a proper comparator because he did not replace Clark, but the evidence on that issue is in dispute. [*See* Vol. I, Tab 28 (Final Decision) at 15] Hall began his clerkship in September 2020, shortly after Clark left on maternity leave; he assumed Clark's work duties;[16] and his one-year clerkship term coincided with what would have

---

15 Because of our conclusion that Hall is a proper comparator, we need not make a ruling as to whether Hatcher can also serve as a comparator. Nevertheless, we note that there is a strong basis for concluding that Hatcher was not similarly situated to Clark in "all material respects" relevant to her termination. *See Lewis*, 918 F.3d at 1228. Hatcher held a permanent, career law clerk position with Judge Royal, and had worked for him for fifteen years when Clark was terminated, during which time period Hatcher had assumed responsibilities beyond the normal duties of a term law clerk. *See id.* at 1228 (explaining that "differences in experience . . . can disqualify a plaintiff's proffered comparators"); *see also Crawford v. Carroll*, 529 F.3d 961, 975 (11th Cir. 2008) (holding that the plaintiff's co-worker, who had been employed by the defendant for several years longer than the plaintiff and had "specialized and highly valued expertise" related to the relevant position, was not a proper comparator).

16 As set out *supra* at 28, three other clerks in addition to Hall helped to clear Clark's backlog of motions. Hall was presumably assigned all new work that would otherwise have been sent to Clark had there been only two clerks in chambers.

been the second year of Clark's clerkship. [*See* Vol. III, Tab 2 (Request for Review) at 13-15] Once we assume that Hall was a proper comparator, it is clear that he was treated more favorably than Clark as he was not fired before the end of his clerkship term. Accordingly, we conclude that Clark has properly alleged all the necessary elements of a prima facie case of pregnancy discrimination. *See Maynard v. Bd. of Regents of the Div. of Univ. of the Fla. Dep't of Ed.*, 342 F.3d 1281, 1289 (11th Cir. 2003) (noting that a plaintiff can make out a prima facie case of discrimination with evidence that he was "replaced by a person outside his protected class or was treated less favorably than a similarly-situated individual outside his protected class").

B. Legitimate, Nondiscriminatory Rationale

At this stage of the analysis, the burden shifts to the Middle District to articulate a legitimate, nondiscriminatory reason for Judge Royal's decision to terminate Clark's clerkship in August 2020. The PJO concluded that the Middle District met its burden by citing evidence of Clark's poor work performance, and we agree with that conclusion. [*See* Vol. I, Tab 28 (Final Decision) at 16]

To briefly recap the highlights as to Clark's work performance: (1) Clark submitted her draft in the *Pegg* case on March 20, 2020, almost two months past the already extended two-month deadline, having been repeatedly reminded by Judge Royal that she needed to complete the draft; (2) working with Hatcher, her draft required a lengthy period of edits before it could be circulated to the panel on April 13; (3) on April 8, courtroom deputy Purvis sent

a report to Judge Royal showing that Clark had 16 pending motions on her six-month motions list, while Hatcher had seven; (4) on April 14, Judge Royal met with Clark and emphasized how upset he was with her extreme tardiness on the *Pegg* case, how important it was that she produce timely work, and that he expected improvement from her;[17] (5) on April 15, Judge Jill Pryor, a member of the panel, returned a redlined version of the proposed *Pegg* opinion, which Judge Royal described as "deeply embarrassing" because of errors that Judge Pryor had identified; (6) on June 12, 2020, the Eleventh Circuit reversed Judge Royal's ruling in the *Adams* case, which ruling was based on a recommendation and an order that Clark had drafted; (7) on July 17, Purvis submitted an updated report showing that Clark had 22 motions pending on her list of uncompleted work, while Hatcher had three; (8) on August 12, Purvis submitted another updated report showing that Clark's work backlog was increasing as she now had 27 motions pending, while Hatcher had two; (9) on August 18, Judge Royal terminated Clark's employment.

These performance issues, which are well-documented in the record, easily satisfy the Middle District's burden at the second stage of the *McDonnell Douglas* analysis. *See Alvarez v. Royal Atl. Dev., Inc.*, 610 F.3d 1253, 1265 (11th Cir. 2010) ("The defendant need not persuade the court that it was actually motivated by the

---

17 As noted above, Clark told Hatcher that it was the worst job review she had ever gotten.

proffered reason, but need only present evidence raising a genuine issue of fact as to whether it discriminated against the plaintiff."); *Chapman v. AI Transp.*, 229 F.3d 1012, 1028 (11th Cir. 2000) (noting that the employer's burden at the second stage of *McDonnell Douglas* "is only a burden of production").

C. Pretext

The Middle District having offered legitimate, nondiscriminatory reasons for the firing of Clark, she must come forward with credible allegations showing that the asserted reason for her termination—poor work performance—is merely a pretext for unlawful discrimination, and that the real reason she was terminated was that she was pregnant. A Title VII plaintiff can establish pretext by demonstrating "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence." *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1136 (11th Cir. 2020) (en banc). And to prevail at the third stage of the *McDonnell Douglas* analysis, the plaintiff must show that "each of the . . . proffered nondiscriminatory reasons [for an adverse action] is pretextual." *Ring v. Boca Ciega Yacht Club Inc.*, 4 F.4th 1149, 1163 (11th Cir. 2021). "A plaintiff's failure to rebut even one nondiscriminatory reason is" fatal to her claim. *Id.* (alterations adopted).

We conclude that Clark has failed to show weakness, implausibility, inconsistency, incoherence, or contradictions in Judge Royal's explanation for why he fired Clark. Stated another way,

she has failed to provide evidence from which a factfinder could reasonably conclude that the real reason Judge Royal fired her was her pregnancy, not her unsatisfactory job performance. In finding a lack of pretext, the PJO focused on Clark's work on the draft in the *Pegg* case.[18] [*See* Vol. I, Tab 28 (Final Decision) at 17-18] Specifically, the PJO determined that the "issues regarding the timeliness and quality" of the *Pegg* draft were sufficient to both explain and justify all of Judge Royal's employment decisions with respect to Clark, including his decision to fire her. [*Id.*] The PJO concluded further that as to the seriously tardy *Pegg* draft, Clark had not responded to the evidence with allegations that credibly suggest pretext. [*Id.*] We agree with the PJO on these points, but we also expand the analysis based on our review of the entire record.

Focusing first on the *Pegg* issue, Clark does not—and cannot—dispute that Judge Royal gave her a two and one-half month time period—from mid-November until the end of January[19]—within which she was directed to complete a proposed opinion in the case. She likewise cannot dispute that she was seriously tardy in completing that assignment, missing the deadline by almost two

---

18 Assuming Clark had made a prima facie case, the PJO made an alternative finding on the second and third prongs of the *McDonnell Douglas* analysis. [*See* Vol. I, Tab 28 (Final Decision) at 16]

19 As noted, Judge Royal initially gave Clark an approximately 45-day deadline—from mid-November to the end of December to complete the draft. He extended that deadline to avoid Clark having to work over the Christmas holidays, giving her until the end of January.

months. Further, she does not dispute that this project was a high priority for Judge Royal and that he was extremely upset with her continuing inability to get him a draft. Nevertheless, she seems to argue that Judge Royal was nonetheless wrong to fault her for this tardiness.

During her interview, Clark's primary explanation for her delay was to blame Hatcher, stating that Hatcher had held onto the draft for the entire month of February. As set out above, that explanation is contradicted by the record. Contrary to what Clark stated in her interview, she did not present Hatcher with a draft in the case until March 20, almost two months after the expiration of her deadline. While Hatcher and Clark spent over three weeks editing, back-and-forth, the draft, the record also shows that Hatcher did not drag her feet but was working intensely on Clark's draft during this time period leading up to the presentation of the draft to Judge Royal on April 9.

Second, Clark suggests that Judge Royal's deadline was unreasonable because the issues on appeal in the *Pegg* case were too complex to permit completion of a draft in the two and one-half month time period allowed. [*See* Vol. I, Tab 20 at Clark Interview, p. 26; Vol. III, Tab 2 (Request for Review) at 25] Yet, Judge Royal was an experienced judge, having served on the bench for 18 years at the pertinent time, and his assessment was that this was a relatively straightforward assignment that should have been easily completed within the time frame he allowed, particularly since

Clark had prepared the bench memo on the case prior to oral argument.

We have reviewed Clark's draft and concur with that assessment. Pegg was convicted of conspiracy to obstruct justice, obstruction of justice, and making a false statement to federal law enforcement officers, based on his payment to a former cellmate to act as a cooperator with law enforcement so that Pegg could receive a reduction of his sentence. [Vol. I, Tab 21 (Proposed Decision), Ex. 5 (March 20, 2020 Pegg Draft) at 2] In her March 20 draft, Clark was able to address in three pages what appear to be uncomplicated facts. [*Id.* at 2–6] For the most part, the legal issues appear to be relatively straightforward. Clark was able to deal with each of the six errors Pegg raised on appeal in relatively short fashion, with the parentheticals following each issue showing the number of pages Clark spent addressing the issue: (1) the denial of Pegg's suppression motion (4 pages); (2) the denial of his motion for a mistrial based on three statements by the prosecutor (5 pages); (3) the district court's refusal to give requested jury instructions (2 ½ pages); (4) the denial of Pegg's motion for judgment of acquittal based not on the sufficiency of the evidence, but on a legal interpretation of the statute (4 pages); and (5) the district court's imposition of a sentencing enhancement based on the defendant's interference with the administration of justice (3 ½ pages) and an enhancement based on extensive planning (1 ½ pages). [*Id.* at 6–26]

Four months elapsed between the time Clark was assigned the *Pegg* opinion to draft and the date on which she submitted that

draft to Hatcher. It is difficult to understand how it could have taken so long to complete this assignment. Perhaps recognizing this fact, Clark also indicated in her interview that she spent part of this four-month period working on district court motions and, in hindsight, realizes she should have better prioritized the *Pegg* assignment. [Vol. I, Tab 20 at Clark Interview, pp. 26-27] But that explanation is hard to understand, given that Judge Royal had directed Clark to finish the draft by the end of January and had made repeated inquiries about Clark's progress. [*See* Vol. I, Tab 20 at Royal Interview, pp. 19-20]

And it was not just the problems surrounding the *Pegg* draft; there were other issues with Clark's work, which are likewise documented in the record. For example, Clark accumulated a backlog of pending district court motions that grew steadily between April and August of 2020 despite Judge Royal's warning to Clark in mid-April 2020 that the work "had to get out" in a timely manner. And in June, Clark's work in the *Adams* case resulted in a reversal by the Eleventh Circuit that was based, in part, on the opinion's failure to address all the Fourth Amendment issues raised in the plaintiff's complaint.

Clark acknowledged her performance issues in her interview and in her contemporaneous email exchanges with Hatcher. For example, Clark admitted in an email to Hatcher that she had never gotten "such a bad performance review" as she received from Judge Royal during the conversation at his house on April 14, 2020 about *Pegg* and her pending motions. [*See* Vol. I, Tab 21

(Proposed Decision), Ex. 12] Clark likewise confirmed during her interview that she knew the *Pegg* draft was late and that she "had some control over" the delay, that she knew Judge Royal was "definitely upset" about the delay, and that she told Judge Royal during the April 14 meeting she "felt like [she] could do better, especially with . . . writing." [Vol. I, Tab 20 at Clark Interview, pp. 24, 26, 44] In addition, Clark sent an email to Hatcher on June 17, 2020 in which she stated that Judge Royal "was in a bad mood [a few days prior] because of [her] IFP that got reversed" in the *Adams* case. [*See* Vol. I, Tab 21 (Proposed Decision), Ex. 12] Finally, in response to Judge Royal's request in July 2020 for an update on Clark's progress on her pending motions, Clark stated in an email to Hatcher on July 17, 2020 that the motions were "coming slowly." [*See* Vol. I, Tab 21 (Proposed Decision), Ex. 15] Clark stated that she had "struggled . . . trying to figure out how" she was going to write one motion and gone "down a rabbit hole" and that she had not been able to start writing the other motion yet. [*Id.*] She concluded her update by saying that she hoped Judge Royal was "not disappointed." [*Id.*]

Notwithstanding all this, Clark now argues that the work performance rationale for her termination was contrived and that she was in fact terminated on account of her pregnancy. [*See* Vol. III, Tab 2 (Request for Review) at 19-29] Clark attempts to show pretext by claiming that her work backlog has been "exaggerated." [*See id.* at 25-27] Yet, as noted above, Clark's number of pending motions continued to grow until the end of her tenure even though

Judge Royal had told her that she had to improve the timeliness of her work. [*See* Vol. I, Tab 21 (Proposed Decision), Exs. 3, 13-14] Finally, and significantly, that Judge Royal felt it necessary to take the extraordinary step of telephoning the Chief Judge of the Eleventh Circuit and petitioning the Eleventh Circuit Judicial Council to allow the hiring of an additional law clerk during the middle of a fiscal year clearly indicates his genuine belief that Clark was unable to get her work done.

Clark also argues that the workload for Judge Royal's law clerks was "more than two law clerks could reasonably handle." By taking two months longer on a single assignment than Judge Royal thought was required, Clark necessarily compressed the time period available for performing her other work, but her mounting list of uncompleted work suggested that her problems with timeliness were continuing. Yet, even assuming Judge Royal's clerks had an unreasonably heavy workload, that fact in no way suggests that Clark was terminated because of her pregnancy. On the contrary, it indicates that she was terminated for failing to meet her employer's expectations. *See Chapman*, 229 F.3d at 1030 ("A plaintiff is not allowed to recast an employer's proffered nondiscriminatory reasons or substitute his business judgment for that of the employer. Provided that the proffered reason is one that might motivate a reasonable employer, an employee must meet that reason head on and rebut it, and the employee cannot succeed by simply quarreling with the wisdom of that reason.").

Nor do we think that Judge Royal's request for Clark to confirm with her doctor that it would be safe for her to travel to San Francisco for his Ninth Circuit sitting demonstrates pretext, as Clark suggests.[20] [*See* Vol. III, Tab 2 (Request for Review) at 19] Judge Royal made that request after a question was raised during a chambers staff meeting as to whether Clark would be able to travel across the country during the third trimester of her pregnancy. [*See* Vol. I, Tab 20 at Royal Interview, pp. 33-35] Judge Royal never indicated that he did not want Clark to travel to San Francisco to attend the sitting on account of her pregnancy. [*See id.*; Vol. I, Tab 20 at Clark Interview, pp. 19-21] On the contrary, Judge Royal asked Clark to confirm with her doctor that it was safe to travel at that point in her pregnancy so that she could attend the sitting: a request that suggested the judge was appropriately solicitous of Clark's welfare. [*See* Vol. I, Tab 20 at Royal Interview, p. 35] Clark concedes that she was prepared to travel to the sitting after she cleared the trip with her doctor, and she does not allege that Judge Royal ever raised the issue again. [*See* Vol. I, Tab 20 at Clark Interview, pp. 20-21] As such, there simply is no plausible argument that the conversation surrounding Clark's ability to travel to San Francisco for the Ninth Circuit sitting suggests that Judge Royal terminated Clark months later because of her pregnancy.

---

20 This request is presumably what Clark is referring to when she says that her pregnancy was "improperly discussed as a hurdle and a hindrance to [her] work." [*See* Vol. III, Tab 2 (Request for Review) at 19]

Most of Clark's other allegations of pretext involve comments and conduct by Hatcher, rather than by Judge Royal. [*See* Vol. III, Tab 2 (Request for Review) at 16-17, 19-22] Specifically, Clark cites the following facts as evidence of pretext: (1) Hatcher did not respond enthusiastically to Clark's pregnancy announcement on January 23, 2020, (2) Hatcher treated Clark differently—her edits becoming unreasonable and her mentoring "abusive" in unspecified ways—after Clark announced her pregnancy, and (3) Hatcher stated during an April 14, 2020 phone conversation with Clark that she was infuriated that Clark's pregnancy was going to require Hatcher to undertake Clark's job duties in addition to her own. [*Id.* at 19-21] Clark argues that her allegations show that Hatcher did not want to work with Clark "because of the inconveniences surrounding pregnancy and motherhood." [*Id.* at 16]

We note that Hatcher, herself a mother of three children, stated in her interview that she had been pregnant at every position she had held since graduating from law school, including her career clerk position with Judge Royal. [*See* Vol. I, Tab 20 at Hatcher Interview, p. 15] In addition, our review of Hatcher's email messages to Clark during the relevant time period did not reveal a single communication that could be characterized as unreasonable or abusive. [*See* Vol. I, Tab 21 (Proposed Decision) at Exs. 5-6, 10, 12, 15-17] On the contrary, the messages from Hatcher to Clark between April and August of 2020 that are in the record are uniformly positive and cordial.

Nevertheless, we assume that the April 14, 2020, phone conversation between Hatcher and Clark happened exactly as Clark describes, and we further assume that Hatcher's comments during that conversation indicate that Hatcher was frustrated, at least in part, because of the extra work she believed would fall on her shoulders as a result of Clark's impending childbirth. Even so, Clark's allegations regarding Hatcher do not establish pretext with respect to her termination because they do not show any discriminatory animus on the part of Judge Royal, the decisionmaker who terminated Clark's employment. *See Damon*, 196 F.3d at 1361 (noting that a "pattern of firing and demoting *so many* older workers and replacing them with younger workers, *by the relevant decision-maker during the same time period*, constitutes probative circumstantial evidence of age discrimination" (emphasis in original)).

Clark does not—nor could she—credibly allege that Hatcher, rather than Judge Royal, was the decisionmaker as to her termination. Law clerks working for the federal courts do not have hiring and firing authority over chambers staff. Indeed, as to Judge Royal's motivation for Clark's termination, Clark does not allege that Judge Royal personally had any pregnancy-related animus towards her. On the contrary, Clark affirmatively stated in her interview that she did not believe Judge Royal had an issue with her pregnancy. [*See* Vol. I, Tab 20 at Clark Interview, p. 42] Certainly, none of the evidence in the record points to any animus by Judge Royal against a pregnant employee. Judge Royal had hired Clark

when she was pregnant, with her start date occurring when her new baby was six months old. When he became concerned that Clark was unable to keep up with her workload and he sought out a third employee to help, Judge Royal hired, as a temporary employee, a former clerk who was herself pregnant. Finally, Judge Royal had hired as his career clerk, Sally Hatcher, who herself had had a child while working at each of her two prior places of employment and also while working for Judge Royal as his clerk.

Further, at the June meeting, when requesting time off after the anticipated birth of her second child in late August, Clark acknowledged to Judge Royal that she was not subject to the FMLA and thus was not entitled to any leave pursuant to that statute. She nonetheless asked him to allow her six weeks off. In response, Judge Royal offered to give her the full 12 weeks that an employee subject to the FMLA would receive.[21] In addition, although Judge Royal had thus far employed only two clerks since becoming a senior judge, his workload was sufficiently high to allow him three clerks. And in April he had used that authority to hire a third clerk, Matthew Hall, who was to begin working in September. Thus, Judge Royal was going to be covered by a second clerk during the

---

21 After he terminated Clark's employment, Judge Royal honored his previous commitment to give her twelve weeks maternity leave and even made sure that this was paid leave, notwithstanding the fact that Clark was not entitled to any paid leave. [*See* Vol. I, Tab 20 at Clark Interview, p. 33]

time Clark was to be gone on maternity leave, and he could have readily welcomed her back to chambers as a third clerk had he believed that she was capable of handling the tasks demanded of her as a law clerk.

Nor can Hatcher's alleged discriminatory animus be attributed to Judge Royal under a "cat's paw" theory, as Clark argues. [*See* Vol. III, Tab 2 (Request for Review) at 16] The cat's paw theory has been applied to hold an employer liable for the discriminatory acts of a supervisor who is not a final decisionmaker if the supervisor "performs an act motivated by [a discriminatory animus] that is intended by the supervisor to cause an adverse employment action . . . if that act is a proximate cause of the ultimate employment action." *Staub v. Proctor Hosp.*, 562 U.S. 411, 422 (2011). *See also Ziyadat v. Diamondrock Hospitality Co.*, 3 F.4th 1291, 1298 (11th Cir. 2021) (explaining that the "cat's paw theory concerns the conditions under which a lower-level employee's animus can be imputed to a decisionmaker").

Again, we will assume that Hatcher was unhappy that Clark was pregnant and concerned about the burdens that would be shifted to her. Clark speculates that, for this reason, Hatcher devised a plan to undercut Clark by providing negative reports to Judge Royal about Clark's work that undermined Judge Royal's opinion of her. [*See id.*] Even assuming this is true, Clark cannot prevail on a cat's paw theory because she does not credibly allege that it was negative reports by Hatcher about her work that proximately caused her termination, as opposed to the unsatisfactory

work itself. *See Staub*, 562 U.S. at 421 (noting that cat's paw liability arises only when the decisionmaker "relies on facts provided by the biased supervisor").

On the contrary, it is clear from the record that it was Clark's work itself, rather than any negative reports allegedly made by Hatcher about the work, that proximately caused Clark's termination. Not to belabor the point, but Judge Royal did not need a report from Hatcher to know that Clark's draft of the *Pegg* opinion was seriously tardy—he had first-hand knowledge of that fact. As noted, Judge Royal repeatedly asked Clark about the *Pegg* case once the deadline passed in January 2020. Nevertheless, Clark did not submit a draft of the opinion to Hatcher for editing until late March 2020, despite Clark's repeated assurances to Judge Royal that she would get the draft to him "by Friday" or "by the end of the week." Nor did Judge Royal learn about Judge Pryor's redlined corrections to the *Pegg* draft—which he described as "deeply embarrassing" to him because of numerous citation errors—from Hatcher. Instead, Judge Royal received the redlined corrections directly from an Eleventh Circuit panel member.

As to Clark's work backlog, Judge Royal learned from his deputy clerk Purvis, rather than Hatcher, that Clark's list of pending motions was growing between April and August of 2020. Clark does not allege that Purvis, who provided all the information to Judge Royal about Clark's work backlog, harbored any discriminatory animus against her, or that Purvis could have properly refused to provide Judge Royal with the requested information. Further,

and although Judge Royal obtained the specific details about Clark's work backlog from Purvis, he explained in his interview that "it wasn't like there was some mystery about the fact that [Caitlyn] wasn't getting the work done." [Vol. I, Tab 20 at Royal Interview, p. 42]

For all the above reasons, we agree with the PJO that Clark's claim of wrongful discrimination based on her pregnancy is without merit. Before leaving our discussion of Clark's pregnancy discrimination claim, we do pause to make one final point. In addition to her specific allegations about pretext, Clark argues more generally in her Request for Review that we can infer that her termination was based on her pregnancy because all the complaints about her work arose after Clark announced her pregnancy on January 23, 2020, before which date Judge Royal and his staff were pleased to have Clark working in chambers. [*See* Vol. III, Tab 2 (Request for Review) at 19-21] Of course, what Clark's argument ignores is that, prior to announcing her pregnancy, she had not yet missed her deadline for submitting the *Pegg* draft by two months, and Judge Jill Pryor had not yet made redlined corrections to the *Pegg* draft. Moreover, Judge Royal could not have foretold that Clark would accumulate a long and growing list of pending substantive motions in the upcoming months. That those events had not yet occurred explains why "there were zero complaints regarding [Clark's] writing or her work product" before she announced her pregnancy. [*See id.* at 21]

In short, the Middle District has asserted legitimate, non-discriminatory reasons for Clark's termination. Clark has failed to demonstrate that those reasons were a pretext and that the real reason for her firing was her pregnancy. We therefore **AFFIRM** the PJO's decision that Clark's pregnancy discrimination claim is without merit.

III. Clark's Hostile Work Environment Claim

To prevail on a Title VII hostile work environment claim, a plaintiff must show that she was subjected to severe or pervasive harassment that was motivated by a protected characteristic. *See Tonkyro v. Sec'y, Dep't of Veterans Affairs*, 995 F.3d 828, 836–37 (11th Cir. 2021). Harassment is sufficiently severe or pervasive to be actionable under Title VII when it results in a work environment that an employee "subjectively perceive[s]" as hostile or abusive, and "that a reasonable person would find hostile or abusive" based on the frequency and severity of the conduct, and whether the conduct is "physically threatening" or "unreasonably interferes with the employee's job performance." *Id.* at 837 (quotation marks omitted). *See also Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1152 (11th Cir. 2020) ("A hostile work environment claim under Title VII requires proof that the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." (quotation marks omitted)). The severe or pervasive standard is intended to be "sufficiently demanding to ensure that Title VII does not become a

general civility code." *Tonkyro*, 995 F.3d at 837 (quotation marks omitted).

Clark's hostile work environment claim is based on: (1) Hatcher's unenthusiastic reaction to Clark's pregnancy announcement on January 23, 2020, followed by a statement to Purvis—not Clark—that Hatcher feared Clark would "never get her work done" now; (2) a telephone conversation between Clark and Hatcher on April 6, 2020 concerning the *Pegg* revisions that Clark alleges "escalated into a barrage of insults and teardowns," but that she fails to describe in any further detail; (3) the telephone conversation between Clark and Hatcher on April 14, 2020, described above, in which Hatcher lost her temper; (4) the conversation during a staff meeting as to whether Clark would be able to travel to San Francisco to attend the Ninth Circuit sitting, described above, and (5) Clark's general allegation that Hatcher's "attitude and demeanor" changed after Clark announced her pregnancy. [Vol. III, Tab 2 (Request for Review) at 22-29]

None of the specific comments or conduct alleged by Clark in support of her harassment claim occurred within 180 days of when she filed her Formal Complaint on February 11, 2021. And Clark does not allege that the unspecified "attitude and demeanor" change manifested in an objectively hostile or abusive way anytime within the applicable 180 days—that is, anytime on or after August 11, 2020. Indeed, it appears from the record that Clark and Hatcher had very little contact on or after August 11, 2020. Clark and Hatcher had a friendly email exchange on August 6, 2020, after

Hatcher sent a message stating, "Hey Caitlyn! Just checking in! Sorry I haven't checked in earlier—been a very busy morning! How are things coming?!" [Vol. I, Tab 21 (Proposed Decision), Ex. 16] Hatcher subsequently sent Clark a message on August 21, 2020, in which she referenced a draft order Clark had submitted and stated, "Hey Caitlyn! I thought you did a good job on this. Here are a few suggested edits. It feels weird not to say . . . goodbye to you in person." [*Id.*] As discussed, the Middle District's EDR Plan requires that a formal complaint be filed "within 180 days of the alleged wrongful conduct." EDR Plan § 4.C.3.a. Accordingly, Clark's hostile work environment claim, which is based entirely on conduct that occurred outside the 180-day time frame, is barred.

Furthermore, even if Clark's hostile work environment claim was timely, the conduct she alleges does not rise to the level of severe or pervasive harassment that is necessary to support a hostile work environment claim. First, Hatcher's lack of enthusiasm when Clark announced her pregnancy and a comment made by Hatcher to Purvis, not Clark, that Clark would "never get her work done" clearly do not meet the standard for establishing a hostile work environment. *See Tonkyro*, 995 F.3d at 837. Likewise, the request that Clark confirm with her doctor that it would be safe for her to travel by plane to San Francisco during the third trimester of her pregnancy to attend the Ninth Circuit sitting is not objectively hostile or abusive. *See id.* As to Clark's general allegation that Hatcher's attitude and demeanor changed after Clark announced her pregnancy and that one of her telephone

conversations with Hatcher "escalated into a barrage of insults and teardowns," the governing legal standard requires us to determine whether a reasonable person would have found the work environment to be "objectively hostile" based on the frequency or severity of the alleged misconduct, whether the conduct was physically threatening, and the extent to which the conduct interfered with the plaintiff's job. *See Fernandez*, 961 F.3d at 1153. Clark's vague allegations about Hatcher's bad attitude, unpleasant demeanor, and unspecified insults lack any of the details we would need to make that determination and are thus legally inadequate to support a hostile work environment claim.

That leaves Clark's allegations about her telephone conversation with Hatcher on April 14, 2020. Even assuming this conversation occurred exactly as Clark describes,[22] it does not constitute sufficiently severe or pervasive harassment to support a hostile work environment claim, especially when it is considered in context. First, Hatcher and Clark's telephone conversation on April 14 cannot be considered pervasive harassment because it is merely

---

22 In analyzing the conversation, we have considered Clark's description contained in her contemporaneous written notes, which are attached to Clark's objections to the PJO's proposed final decision. [*See* Vol. I, Tab 25 (Clark's Objection to Proposed Decision) at April 15, 2020 Email attachment] Clark states she inadvertently failed to provide the notes during her interview, as requested by the PJO. [*See id.* at 17] However, she submitted the notes in her response to the PJO's proposed written decision, and the PJO considered the notes before issuing his final written decision. [*See* Vol. I, Tab 28 (Final Decision) at 3, n.3]

one conversation among numerous other interactions, many of which are preserved in email messages and attached to the record. As discussed above, we have reviewed the email exchanges between Hatcher and Clark, all of which occurred after Clark announced her pregnancy, and we have not found a single message from Hatcher that can be characterized as rude or otherwise out of line. On the contrary, all of Hatcher's email messages to Clark throughout the relevant time period were cordial and encouraging. For example, the day before the contentious April 14 conversation, Hatcher had sent Clark an email stating that a draft Clark had submitted was "SO MUCH better!!! I still have some suggestions. Call if you need to talk. If not—just send your next draft!" [Vol. I, Tab 21 (Proposed Decision), Ex. 16]

To set the context for the April 14 telephone conversation, Hatcher had discovered that Clark had submitted a draft order that did not resolve all the pending motions on the docket of the relevant case. So, she sent Clark an email message to inquire about the omission. [*See* Vol. I, Tab 21 (Proposed Decision), Ex. 10] Hatcher was understandably frustrated by Clark's response that she had not addressed the pending motions because she "wasn't sure what to do with them." [*See id.*] Nevertheless, Hatcher responded appropriately, explaining to Clark that "You can't just leave motions hanging on because you don't know what to do with them" and suggesting that Clark "call or sametime" Hatcher "about these kinds of things." [*Id.*] The April 14 telephone call that is central to Clark's hostile work environment claim occurred immediately

thereafter. And again, we will assume the conversation during the call happened just as Clark alleges. But the record shows that just a few days later, on April 16, 2020, Hatcher resumed her cordial email messaging to Clark. [*See* Vol. I, Tab 21 (Proposed Decision), Ex. 16]

Nor is the April 14, 2020 phone conversation objectively severe enough—in and of itself—to support a hostile work environment claim. Hatcher admitted that she lost her temper and raised her voice to Clark, and we assume Hatcher stated to Clark that she was "infuriated" about Clark getting pregnant so soon after starting her clerkship and worried about the impact it would have on Hatcher's own workload and personal life. However, it is undisputed that Hatcher later apologized for losing her temper. Further, and based on Clark's own contemporaneous notes, the thrust of the conversation was Hatcher's concern about work-related issues, including the fact that Clark was "working too slow" and that Hatcher was not Clark's "boss" and could not do Clark's work for her. [Vol. I, Tab 25 (Clark's Objection to Proposed Decision) at April 15, 2020 Email] Again, Hatcher's frustration with Clark's work had been aroused because Clark had knowingly submitted an incomplete order whose omissions had been discovered before issuance of the order only because Hatcher had happened to look at the docket. *Compare Fernandez*, 961 F.3d at 1153 (concluding that the plaintiff's work environment was objectively hostile based on "ample evidence that the harassment he faced was frequent" and that it included "derogatory remarks, including phrases such as

'shitty Cubans,' 'fucking Cubans,' and 'crying, whining Cubans' on a near-daily basis").

In sum, Clark's hostile work environment claim is untimely and, even if timely, Clark does not allege sufficiently severe or pervasive harassment to support the claim. For both reasons, we **AFFIRM** the PJO's decision that, as a matter of law, Clark's hostile work environment claim fails.

IV. Clark's Claim for Abusive Conduct

Abusive conduct is defined by the EDR Plan as "a pattern of demonstrably egregious and hostile conduct not based on a protected category that is so severe or pervasive as to alter the terms and conditions of employment and create an abusive working environment." EDR Plan, App. 1. The EDR Plan's definition of abusive conduct incorporates the same objective standard that applies to hostile work environment claims under Title VII, clarifying that abusive conduct under the Plan "is conduct that a reasonable person would consider to be threatening, oppressive, and intimidating." *Id.* In addition, the Plan specifically excludes from its definition of abusive conduct "communications and actions reasonably related to the supervision of an employee's performance and designed to ensure that employees live up to the high expectations of their positions, including but not limited to: instruction, corrective criticism, and evaluation." *Id.*

Like her hostile work environment claim, Clark's abusive conduct claim is time-barred because the last allegedly abusive

conduct occurred well before August 11, 2021. In addition, Clark's allegations in support of her abusive conduct claim—including the telephone conversation between Clark and Hatcher on April 14, 2020 during which Hatcher allegedly "screamed her frustrations" about Clark's pregnancy and inability to complete her work and other instances when Hatcher was rude in unspecified ways or had a "negative attitude"—simply do not satisfy the definition of abusive conduct set out in the EDR Plan. Accordingly, we **AFFIRM** the PJO's conclusion that Clark's abusive conduct claim is without merit.

V. Clark's Retaliation Claim

In addition to discrimination, harassment, and abusive conduct, the EDR Plan prohibits retaliation, which the Plan defines as "an adverse employment action taken against an employee for opposing, reporting, or asserting a claim of wrongful conduct under this Plan." EDR Plan § 2.A.4. and App. 1. Clark claims that Judge Royal terminated her in August 2020 to retaliate against her for complaining on April 15 that Hatcher had spoken rudely to her during the phone conversation between the two on the prior day.[23]

---

[23] Clark alleges in her complaint that she notified Judge Royal on April 14, 2020 of Hatcher's "discriminatory animus" but the undisputed facts show that Hatcher and Clark had the telephone conversation that is the subject of this allegation on April 14, 2020, and that Clark notified Judge Royal about the conversation on April 15, 2020, the day after the conversation occurred. [*See* Vol. I, Tab 20 at Clark Interview, p. 30 ("So I didn't talk to him until the next day, but I did write that email and I was going to send it but I did not.")]

[*See* Vol. I, Tab 3 (Formal Complaint) at 17-19, 20] Clark also speculates that Judge Royal later retaliated against her by giving a negative reference about her to the Air Force Materiel Command, a potential employer with whom Clark had interviewed on December 11, 2020, and by disparaging her to his colleagues in the Middle District. [*See id.*; Vol. III, Tab 2 (Request for Review) at 18]

Like her pregnancy discrimination claim, Clark's retaliation claim is based on circumstantial evidence and is thus analyzed under the *McDonnell Douglas* burden-shifting framework. *See Johnson v. Miami-Dade County*, 948 F.3d 1318, 1325 (11th Cir. 2020) ("When a Title VII retaliation claim . . . is based on circumstantial evidence, this Circuit utilizes the three-part *McDonnell Douglas* burden-shifting framework."). As that framework is applied in the retaliation context, Clark must first establish a prima facie case of retaliation by showing that: (1) she engaged in protected conduct—that is, conduct protected by the EDR Plan, (2) she suffered an adverse employment action, and (3) "there is some causal relationship between the two events." *Id.* The burden then shifts to the Middle District to articulate a legitimate, nonretaliatory reason for the adverse action. *Id.* Assuming the Middle District makes the required showing, the burden shifts back to Clark to prove that the proffered reason "was not the real basis for the decision, but a pretext" for retaliation. *Id.*

A. Clark's Termination

As to Clark's termination, we assume Clark engaged in protected activity when she complained on April 15, 2020 to Judge

Royal about Hatcher's comments regarding her pregnancy, and that Clark suffered an adverse employment action when she was told on August 18 that her clerkship would end at the conclusion of her maternity leave in November 2020.[24] Even so, Clark must still make a showing that her complaint caused her termination. To satisfy the causation requirement at the prima facie stage of the analysis, Clark must show that her protected activity (her complaints to Judge Royal about Hatcher's comments on April 15, 2020) and the alleged adverse action (her termination in August 2020) were not "wholly unrelated." *See Tolar v. Bradley Arant Boult Commings, LLP*, 997 F.3d 1280, 1294 (11th Cir. 2021).

Although that is not a high bar, Clark's allegations fail to meet it. Indeed, Clark does not allege any causal link beyond the fact that her complaint about Hatcher's comments on April 15, 2020 preceded her termination four months later. It is true that temporal proximity can establish prima facie causation if the protected conduct and the adverse action are "very close" in time. *See id.* But the four-month delay between Clark's discussion with Judge Royal in April 2020 and his decision in August 2020 to terminate her is too long to infer causation based on temporal proximity alone. *See Johnson*, 948 F.3d at 1328 ("A three-to-four-month

---

24 Again, the reduction of Clark's clerkship from four to two years is not actionable, as it occurred outside the 180-day time period for asserting claims under the EDR.

disparity between protected conduct and an adverse employment action is insufficient to establish pretext[.]").

Clark points out that Judge Royal called a professor at the University of Georgia looking for another law clerk on April 16, 2020. [Vol. III, Tab 2 (Request for Review) at 17] This was one day after Clark told Judge Royal about her conversation with Hatcher. [*Id.*] It was also one day after Judge Royal received Judge Pryor's edits to the *Pegg* opinion. In any event, the relevant adverse action—Judge Royal's decision to terminate her— did not occur until four months later in August 2020.

Even assuming Clark could establish a prima facie case of causation in support of her termination-based retaliation claim, she has not presented any evidence of pretext to overcome the Middle District's legitimate explanation for the termination—namely, performance issues with respect to both the quantity and the quality of Clark's work. The Middle District's explanation meets its "exceedingly light" burden at the second stage of the *McDonnell Douglas* analysis. *See Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1312 (11th Cir. 2016). The burden thus shifts to Clark to credibly allege that "the reasons given by [the Middle District] were not the real reasons" for her termination, but rather a pretext for retaliation. *See id.* at 1313. For the reasons discussed above, Clark has failed to make a showing of pretext. Accordingly, we **AFFIRM** the PJO's conclusion that Clark's claim that she was terminated to retaliate against her for protected conduct is without merit.

B. Negative References

As another retaliation claim, Clark alleges that Judge Royal provided negative references to the Air Force Material Command and to his fellow colleagues in the Middle District and that he did so in order to retaliate against Clark for asserting the present claims under the Middle District's EDR plan. Turning first to the allegation involving the Material Command application, Clark filed her formal complaint on February 11, 2021, after having filed a request for assisted resolution on December 4, 2020. She alleged in her complaint that she interviewed for an attorney position with the Air Force Materiel Command at Robins Air Force Base on December 11, 2020, that she was one of five candidates interviewed, and that she was notified that she was not selected for the position on January 27, 2020. [Vol. I, Tab 3 (Formal Complaint) at 18-19; *see also* Vol. I, Tab 20 at Clark Interview, p. 38]

From this, she speculates that Judge Royal may have given her a negative reference, albeit she acknowledges that she does not know whether the Materiel Command checked her references. Judge Royal and Purvis, however, confirmed in their interviews that they never were contacted by the Materiel Command or otherwise asked to provide a reference for Clark. [Vol. I, Tab 20 at Royal Interview, p. 32; Vol. I, Tab 20 at Purvis Interview, pp. 26-27] Likewise, Bunt, the Clerk of Court, stated that he was never contacted. [Vol. I, Tab 20 at Bunt Interview, p. 18] Moreover, the premise of Clark's retaliation claim is that anything short of a good

recommendation would constitute retaliation.[25] Yet, it is clear that any honest comments by Judge Royal concerning Clark's performance would not have been flattering. We do not read the Middle District's prohibition of retaliation to give rise to a requirement that a federal judge provide false information.

As to Judge Royal's district court colleagues, Clark asserts in her Request for Review that Judge Royal disparaged her to his colleagues, "preventing any future meaningful employment in the Middle District." [*See* Vol. III, Tab 2 (Request for Review) at 18] It is true that Judge Royal had shared with his colleagues, Chief Judge Treadwell and Judge Lawson, the problems he was having with Clark. [Vol. I, Tab 20 at Royal Interview, p. 6] As noted, Judge Lawson volunteered the services of his law clerk to handle one of the cases assigned to Clark. [*See id.* at 3-4] Likewise, Judge Royal shared this same information with his Clerk of Court, David Bunt, when seeking the latter's advice and assistance in finding a means to shore up Clark's deficient performance. [*See id.* at 5-6] That advice led to Judge Royal's request to the Eleventh Circuit for authorization to hire a third clerk. The above interactions, however,

---

25 One of Clark's requested remedies is that the Middle District of Georgia provide her with a good recommendation for any future job applications. [Vol. I, Tab 3 (Formal Complaint) at 22]

had begun prior to Clark's termination and the filing of her EDR complaint.[26]

Further, there is no indication in the record that Clark had applied for a position with another colleague of Judge Royal's.[27] Had she so applied, it seems obvious that any such judge would seek out the input of a judge for whom she had recently clerked. Again, Clark seems to imply that absent a dishonest response from Judge Royal that Clark had done a good job, Judge Royal would be guilty of retaliation. We do not read the anti-retaliation provision so broadly. Accordingly, we **AFFIRM** the PJO's ruling that Clark has not stated a viable retaliation claim against the Middle District based on alleged negative employment references.

---

26 Suggesting that Judge Royal's disparagement to his colleagues may have been done to retaliate against Clark for complaining about her contentious conversation with Hatcher on April 14, Clark cites Judge Royal's statement in his interview that Clark "wouldn't have gotten a good recommendation out of [him] after April 14th." [Vol. I, Tab 20 at Royal Interview, p. 31] As discussed, Clark did not report Hatcher's alleged discriminatory animus to Judge Royal until April 15th. Thus, and contrary to Clark's argument, Judge Royal's statement indicates that the reason he would not have recommended Clark to his colleagues in the Middle District was not her protected conduct—which had not yet occurred on April 14th—but rather her work performance issues.

27 According to InfoWeb, in addition to Judges Treadwell, Lawson, and Royal, there is one other district judge in the Macon federal courthouse—Judge Self—and one magistrate judge—Judge Weigle.

VI. Discovery, Cross-Examination, and Impartial Decision-making

Finally, Clark argues that the PJO erred by dismissing her claims without giving her an opportunity for discovery and a formal hearing with cross-examination, and that the PJO failed to act impartially in ruling on her claims. [Vol. III, Tab 2 (Request for Review) at 7-10] We reject both arguments.

Regarding the first argument, the EDR Plan directs the PJO to "ensure that [a complainant's] allegations are thoroughly, impartially, and fairly investigated." EDR Plan § IV.C.3.e.v. To that end, the Plan gives the PJO the authority to "provide for such discovery to the parties as is necessary and appropriate." *Id.* The Plan does not require the PJO to conduct formal discovery, but rather empowers the PJO to "determine what evidence and written arguments . . . are necessary for a fair and complete assessment of the allegations." *Id.* Here, the PJO interviewed the parties and the witnesses identified by the parties to have information relevant to Clark's claims, and he collected and reviewed the documents produced by the parties and witnesses, including Clark's contemporaneous notes of the April 14, 2020 telephone conversation that is central to her allegations. The PJO's conclusion that no additional discovery or procedures were warranted was within his discretion under the EDR Plan and, based on our own review of the interviews, the relevant documents, and Clark's allegations, we find no abuse of that discretion.

In her Request for Review, Clark specifically takes issue with the fact that the documents reviewed by the PJO reflect only her interactions with Hatcher after she announced her pregnancy in January 2020, and that she should be permitted to locate and produce documents prior to the announcement. [Vol. III, Tab 2 (Request for Review) at 7] We disagree. The documents produced after Clark's pregnancy announcement overwhelmingly show that Hatcher treated Clark respectfully, continuing to encourage Clark in her work and to provide editing and other assistance as necessary, after Clark announced her pregnancy. That Hatcher might have treated Clark even better prior to her pregnancy announcement does not help Clark's claim so long as Hatcher engaged in no wrongful conduct—that is, conduct prohibited by the EDR Plan—after the announcement.

Clark also complains in her Request for Review that she needs an opportunity for cross-examination so that she can address "substantially damaging and untrue statements made against her in the interviews." [*See id.* at 8] But cross-examination would add nothing to the analysis as to the most damaging—and undisputed—assessments of Clark's work performance made in the interviews: that Clark submitted her draft in the *Pegg* case two months after an already extended deadline; that the *Pegg* draft submitted to the Eleventh Circuit panel required additional edits that were "deeply embarrassing" to Judge Royal; and that between April and August 2020 Clark's list of pending motions continued to grow, notwithstanding Judge Royal's warning to her at their April

meeting that she had to get more timely in the drafting of orders. Given these undisputed facts, it is implausible that an opportunity for discovery and cross-examination would have allowed Clark to prove that her poor work product was not the actual motivation for her termination, as she suggests in her Request for Review. [*See id.*]

As to Clark's second argument, we see no indication in the record of partiality by the PJO. Clark claims the PJO "made it difficult for [her] to have representation in this matter" but that claim is demonstrably false. [*See id.* at 9] Clark's attorney, Michelle Cohen Levy, notified the PJO of her appearance in the EDR matter on March 31, 2021. [Vol. I, Tab 15 (Letter of Appearance)] After reviewing the notice of appearance, the PJO determined that Levy was not admitted to the Middle District or licensed by the State Bar of Georgia. [*Id.*] The PJO advised Levy to review the Middle District's local rules and determine her ability to appear in the matter, after which Levy engaged local counsel to file a *Pro Hac Vice* Petition for Levy as required by the local rules. [Vol. I, Tab 16 (Local Counsel's Letter)] Thereafter, Levy appeared and submitted filings on behalf of Clark in the EDR matter. The PJO's requirement that Levy abide by the Middle District's local rules cannot be construed as an attempt to "hinder" Clark's ability to have legal representation, as Clark suggests. [*See* Vol. III, Tab 2 (Request for Review) at 9]

Clark also complains that the PJO required her to travel to Dublin for the interviews in this matter "in the middle of a

pandemic" and that the PJO's questioning of Judge Royal was leading and consisted mostly of a "monologue" by Judge Royal. [*See id.* at 9-10] The PJO explained during Clark's interview that he conducted the hearings in Dublin because it was a "neutral place" and he did not think it would be appropriate to require Clark to come back to the Macon courthouse. [*See* Vol. I, Tab 20 at Clark Interview, p. 4] Presumably due to his neutrality concerns, the PJO likewise denied Judge Royal's request to conduct the interviews in Macon. [*See* Vol. I, Tab 13 (Letter to Judge Royal)] And ultimately all the parties and witnesses traveled to Dublin to appear live at their interviews, not just Clark, albeit Clark's attorney Levy requested and was permitted to appear via telephone. [Vol. I, Tab 19 (Levy's Request to Attend Interview Remotely)] As to the PJO's questioning during the interviews, the PJO did not take any more of a cross-examination-style posture when he questioned Clark. [*See generally* Vol. I, Tab 20 at Clark Interview] He asked Clark simple questions about her allegations and the facts of the case as she saw them, and he began the interview by giving Clark an open-ended opportunity to "fill in . . . [the] blanks" with facts that were missing from the complaint and, more generally, to provide any information she wanted to share before getting into specific questions. [*See id.* at 5]

Finally, Clark's suggestion that Judge Royal asked the PJO out to lunch at the end of Judge Royal's interview is a clear mischaracterization of the record. At the conclusion of the interview, which Clark does not dispute had carried into the lunch hour,

Judge Royal stated, "You probably want to go to lunch, right?" [Vol. I, Tab 20 at Royal Interview, p. 53] It is obvious, reading that comment in context, that Judge Royal was not offering to take the PJO to lunch. He simply was commenting that the PJO and his law clerks probably were ready to break for lunch, given the time of day.

For all these reasons, we reject Clark's argument that the PJO erred by ruling on her claims without providing additional procedures such as discovery and cross-examination. Further, and based on our review of the record, we find Clark's suggestion that the PJO acted partially in dismissing her claims unfounded.

CONCLUSION

For the reasons stated above, we **AFFIRM** the PJO's final decision concluding that Clark's claims against the Middle District for wrongful conduct in violation of the EDR Plan are without merit.